

EXHIBIT G

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-11845-shl

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5 In the Matter of:

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7 BSG RESOURCES LIMITED (in administration) and WILLIAM

8 CALLEWAERT and MALCOM COHEN, as JOINT ADMINISTRATORS,

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10 Debtors.

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13 United States Bankruptcy Court

14 One Bowling Green

15 New York, NY 10004

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17 October 3, 2019

18 11:21 AM

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21 B E F O R E :

22 HON SEAN LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 HEARING re Status Conference

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3 HEARING re Doc. #45 Letter Filed On Behalf Of William
4 Callewaert And Malcom Cohen, As Joint Administrators

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6 HEARING re Doc. #46 Letter In Response Filed On Behalf Of
7 Vale S.A.

8

9 HEARING Re Doc. #47 Letter Seeking Court's Approval Of A
10 Protocol To Guide Disclosure Of Personal Information Under
11 The General Data Protection Regulation In Discovery Filed On
12 Behalf Of Vale S.A.

13

14 HEARING re Doc. #48 Letter In Response To The Letter Seeking
15 Court's Approval Of A Protocol To Guide Disclosure Of
16 Personal Information Under The General Data Protection
17 Regulation In Discovery, Filed On Behalf Of William
18 Callewaert and Malcom Cohen, as Joint Administrators

19

20 HEARING re Doc. #50 Letter In Response To Joint
21 Administrators Letter Filed On Behalf Of Vale S.A.

22

23 HEARING re Doc. #50 Letter In Response To Joint
24 Administrators Letter Filed On Behalf Of Vale S.A.

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1 HEARING re Doc. #53 Letter In Response Filed On Behalf Of
2 William Callewaert And Malcom Cohen, As Joint Administrators

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4 HEARING re Doc. #54 Letter In Response Filed On Behalf Of
5 William Callewaert and Malcom Cohen, as Joint Administrators

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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17 BY: FREDERICK D. HYMAN

18 JARRET HITCHINGS

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20 ALSO PRESENT TELEPHONICALLY:

21

22 WILLIAM CALLEWAERT

23 MALCOLM COHEN

24 PATRICK J. HOLOHAN

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P R O C E E D I N G S

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THE COURT: We're here for BSG Resources Limited,
a Chapter 15 case. Let me get appearances from counsel.

MR. HYMAN: Good morning, Your Honor. Fred Hyman
from Duane Morris on behalf of the joint administrators. I
have with me my colleague, Jarret Hitchings. I also have in
the courtroom, Your Honor, Stephen Peters, who joined us
last time, who is a forensic accounting partner at the firm
of BDO.

MR. ROSENTHAL: Good morning, Your Honor. Jeffrey
Rosenthal of Cleary Gottlieb on behalf of Vale. I'm with my
partner, Lisa Schweitzer and my associates, Emily Balter and
Sam Levander.

THE COURT: All right. Good morning to you all.
So let me just set the stage. So we're here in connection
with a variety of filings. A letter -- this is not
exclusive. On the one hand, we had the motion; that is, the
motion was filed regarding discovery, seeking a protective
order, responses to that, a hearing that took place July
30th. There has been numerous proceedings dealing with
discovery since. We got together August 29th for a
conference, and there's a transcript of that.

There are letters on August 27th, September 9th,
September 12th, September 13th, September 16th, September

1 17th, September 18th, September 25th that fill out the
2 ongoing discussions back and forth. And just for brevity in
3 the record, I'm not going to identify each -- each -- who
4 sent each letter and the extent of the letters. I think
5 they're all in the docket. So at a certain point, I think
6 they are the docket. So I think one's 45, one's 46, one's
7 47, one's 48, 50, 54, 58.

8 And then we had an amended notice of hearing that
9 is on Docket 60 that set today as a hearing on document
10 production and GDPR issues. We really are on everything
11 that's been filed back and forth, and that actual item ended
12 notice of hearing actually identifies the various things
13 that had been filed, I think gets all of them, but so many
14 filings, it's hard tell who was.

15 So I have read everything, and we have a variety
16 of matters to talk about. So the one thing I will not do
17 here -- I will not do today is I will not leave here without
18 an order, because the lack of an order has just led to
19 further mischief and lack of progress, and I'm not trusting
20 anybody. I will draft the order myself if necessary and
21 without input from anybody, but I'm tired of this.

22 It just -- I've never seen a case with these kind
23 of discovery problems in my nine years plus on the bench.
24 And in a Chapter 15 case, where COMI is clearly an issue and
25 what people are doing and where they're doing it is so

1 clearly an issue, I have just -- it boggles the mind.

2 So with that said, since we have a requesting
3 party and essentially an ongoing opposing party to
4 discovery, I think it makes sense from hear from Vale, who
5 is a creditor of BSGR, as they call it. I think I've been
6 calling it BSG, but they're really the same thing and just
7 occasionally, the different terms pop up in the papers.

8 So the first question is whether to do this
9 seriatim issue-by-issue. I suspect that that's the way to
10 go, because if we go through everything, who will remember
11 what we talked about at the beginning by the time we get to
12 the end.

13 MR. ROSENTHAL: I think that makes sense, Your
14 Honor. I had thought that just setting the stage for
15 ourselves, I would just lay out the issues that we expected
16 to cover today. We thought we would just start with an
17 update on the production for Your Honor.

18 THE COURT: All right, that will be helpful. I
19 know that's one of the issues.

20 MR. ROSENTHAL: And then we have three issues in
21 dispute regarding sources of production: one has been Beny
22 Steinmetz; two is from officers and directors and Onyx,
23 their back office; and three is the current directors,
24 including Mr. Cramer. And then last, we have the GDPR
25 issues, which my colleague, Ms. Balter is going to address.

1 THE COURT: All right. I think that's pretty much
2 how I had outlined it in my own preparation for today.

3 MR. ROSENTHAL: So with regard to the production
4 update, Your Honor. One of the letters that you had cited
5 was the August 27th letter by the joint administrators'
6 counsel to the Court. It set the stage for the Court
7 conference several days later, in which the joint
8 administrators laid out kind of a tri-part type of schedule,
9 right.

10 So they had 320 documents that they were going to
11 be producing the following week. They had 37,730 documents
12 that would be reviewed, produced on a rolling basis with a
13 target completion of September 27th, and the remainder
14 would be reviewed with -- produced on a rolling basis with a
15 target completion of October 26th.

16 We did get the 320 documents a couple of weeks
17 later than we were told we would get it, but we did get it.
18 There were actually 211 unique documents; the rest were
19 duplicates.

20 With regard to the 37,730 that would be produced
21 on a rolling basis with a completion of September 27th,
22 today is October 3rd, we haven't seen one document.
23 Needless to say, therefore, the documents that the rolling
24 completion would be done by October 26th, we have not seen a
25 document either. We have agreed -- and this kind of helped

1 them release the first batch of 320 -- we said that until
2 the Court addresses the GDPR protocol, we'll accept
3 provisionally their protocol so that that's not an excuse to
4 delay any productions. They then released the 320. We've
5 heard no explanation at all, and in the letters to the
6 Court, there's been no explanation for the lack of those.

7 And unless the Court wants to address that before
8 the three issues in dispute.

9 THE COURT: Let's deal with the three issues in
10 dispute, and then we'll loop back to the schedule.

11 MR. ROSENTHAL: So with regard to the three
12 issues, Your Honor, the first one is Beny Steinmetz, you
13 know, the number one, the big boss, the beneficial owner of
14 BSGR. And the Court made a lot of statements that was
15 really spot on to the law back at the last conference, in
16 which Your Honor said, for example, at Page 44, if somebody
17 is conducting business and enterprise through personal
18 email, you can just read the headlines in the "New York
19 Times" to figure out it's not protected as personal email.
20 And I will -- and nobody's going to cite anything to me for
21 that.

22 If he's conducted business and he's conducted
23 business and wrote emails, and it sounds like there are
24 emails, then there are emails and is conducting business,
25 then he needs to turn over what needs to be turned over.

1 And if he's a principal, he's part of the Debtor.

2 So the Court posed several questions. We provided
3 you with some law to back up what Your Honor was saying to
4 begin with. But Your Honor was really focused on the
5 factual issues, because the law is so well settled here in
6 the Southern District. And the factual issues are: number
7 one, is he the beneficial owner, because if he is, that's
8 the end of the story; and number two, if he's not the
9 beneficial owner, was he out there negotiating the
10 settlement with Guinea? Because then if he did that, that's
11 an issue relating to COMI and acting as an agent for the
12 company. It's also subject to discovery here.

13 So we addressed those factual issues. And,
14 frankly, Your Honor, there's no dispute. We set forth the
15 evidence that we have, that Beny Steinmetz is the beneficial
16 owner, through Nysco the parent, and then that's owned by
17 the Balda Foundation, which is his family's trust to say
18 that he's the beneficial owner. There's been no engagement
19 or dispute on that issue in the papers.

20 And with regard to negotiation, we got back the
21 same response that Your Honor's been hearing. Well,
22 actually, the story has changed. We told Your Honor, since
23 June, that Mr. Steinmetz was the principal negotiator the
24 settlement with Guinea; that was denied repeatedly. In the
25 latest letter, the joint administrators have acknowledged

1 now that Mr. Steinmetz did negotiate it, but stand on the
2 idea that they still have final approval authority.

3 THE COURT: Well, I was dismayed to see the issue
4 sort of resurface at the end of the letters back and forth.
5 The letters initially seemed to move on to some details
6 about things that we hadn't completely nailed down. You
7 could argue that they had been discussed in sort of general
8 principals, but the devil's always in -- often in the
9 details.

10 But I was dismayed to see his questions about
11 what's appropriate for him or not still being raised, given
12 the facts that I have. So perhaps, I mean, if there's
13 anything else that you briefly wanted to add, but I'd like
14 to hear from the foreign representative on that.

15 MR. ROSENTHAL: Well, I mean, I would just say
16 that the law is quite clear on this, Your Honor. And I
17 think all the Court needs to do is read the Royal Park
18 decision, in which there's five different reasons given by
19 the Court there that all apply here as to why discovery of
20 Mr. Steinmetz is appropriate.

21 And critically, what the joint administrators have
22 done is they have looked at quote, literal control -- do
23 they literally have the ability to force him to do this --
24 as opposed to the test that is in the Southern District and
25 the Second Circuit, which is practical ability. And the

1 Court goes through what practical ability is, and it's clear
2 they have it here. Here is -- there's a financial interest;
3 that alone is practical ability. He was their agent; that
4 alone is practical ability.

5 The other thing, Your Honor, that isn't set forth
6 in the letters, but I think is very relevant to this, is the
7 Royal Park court talks about the fact that the subjects of
8 the requested discovery had participated in prior discovery
9 when it suited the party that was resisting it, and we have
10 that here.

11 Mr. Steinmetz and virtually everybody we're
12 seeking discovery from here produced documents in connection
13 with the arbitration, submitted witness testimony in the
14 LCIA arbitration in favor of BSGR, submitted witness
15 testimony, and came to Paris and testified on behalf of BSGR
16 in the ICSID arbitration.

17 And, you know, we even have and we can hand up to
18 the Court two items: one is an email from Mr. Steinmetz
19 confirming that he checked his files in connection with the
20 LCIA arbitration and the documents requests; and we have a
21 list of all of the custodians that were checked in the LCIA
22 that BSGR's counsel, now the joint administrators' counsel,
23 prepared for us and gave us. Dag Cramer, we checked his
24 phone, we checked his tablet, we checked his home drive.
25 Beny Steinmetz, we checked his BlackBerry, we checked his

1 backup data.

2 So, you know, the notion that they now don't have
3 a practical ability to obtain this is preposterous, and they
4 certainly have not met their burden of proof of avoid a
5 court order here. And that's all I have to say on Mr.
6 Steinmetz for now. I'm happy to hand up these two documents
7 that I just referred to.

8 THE COURT: Good. Just make sure they're shared
9 with the other side. Thank you. All right. Let me hear
10 from the foreign administrators.

11 MR. HYMAN: Good afternoon, Your Honor. If you
12 wouldn't mind, we'd like an opportunity to address issues
13 relating to the current status of production and what we
14 anticipate going forward. We're hopeful that Mr. Peters
15 could present to Your Honor, since he is on the ground and
16 is overseeing --

17 THE COURT: I want to deal with Mr. Steinmetz
18 first.

19 MR. HYMAN: Sure, Your Honor. Your Honor, the
20 context of discovery shouldn't relate to COMI. We
21 understand the order from this Court requiring the joint
22 administrators and BSGR to seek documents back from the date
23 of 2014. Certainly, COMI itself is judged as either the
24 date of the joint administration or the date that the
25 Chapter 15 was filed. The documents that we were just

1 handed all predate the issues relating to either one of
2 those dates.

3 THE COURT: Well, they're submitting them to show
4 his involvement in BSG. So -- and I've yet to hear any
5 dispute of the core facts about him being the guy, for lack
6 of a more legal term. And the foreign representatives were
7 appointed and that's nice, but they don't control him,
8 pretty clearly if the allegations in the factual proffers
9 that have been given to me, are evidence in terms of what
10 he's doing or not doing on behalf of BSG, which is, after
11 all, named for him.

12 And so, without any dispute about any of those
13 facts, why are we still talking about this having talked
14 about this at numerous prior hearings?

15 MR. HYMAN: There is no dispute as to what is in
16 press reports. The joint administrators themselves do not
17 know if Beny Steinmetz and his family ultimately own and
18 control Balda, but we have no reason -- they have no reason
19 to believe that he doesn't.

20 THE COURT: That actually doesn't even necessarily
21 matter if he's out doing things for BSG holding himself out
22 and negotiating deals, which is all relevant to COMI in
23 terms of him being a central figure in the ongoing business.
24 So he could actually have sold every bit of his beneficial
25 interest. If he is -- if he is holding himself out and

1 negotiating deals on behalf of BSG, that's just another way
2 to get to the same place. So what is it that you are not
3 willing to do in connection with producing things relating
4 to Mr. Steinmetz?

5 MR. HYMAN: The joint administrators do not have
6 control over Mr. Steinmetz in order to require him to
7 produce documents to this Court; they simply don't.

8 THE COURT: So when this came up last -- the
9 problem with this, with the discussions we've been having
10 about this is, it's -- we address one thing and then
11 something else -- it's a variation on a theme -- comes up.
12 So am I understanding that you now concede, after having
13 talked about it numerous times, that Mr. Steinmetz is fair
14 game for purposes of subject matter of what he was doing or
15 not doing for purposes of the COMI in this Chapter 15?

16 MR. HYMAN: I think that what we've provided, Your
17 Honor, in connection with our most recent letter was a
18 Declaration of William Callewaert, who happens to be on the
19 phone today listening in. He's one of the joint
20 administrators located in Guernsey.

21 THE COURT: Can I get an answer to my question?

22 MR. HYMAN: Yes. What we are focused on, Your
23 Honor, is what has happened following the administration
24 when the joint administrators were appointed, at which time,
25 nobody other than the joint administrators had any authority

1 to bind BSGR, nor to act as agent for BSGR.

2 THE COURT: Okay. I have heard this argument
3 numerous times, and I think I have overruled this argument
4 numerous times, saying that the foreign administrators can
5 say what they want to say in terms of administration in
6 Guernsey and in terms of getting Court approval in Guernsey
7 to act. That clearly may or may not have any effect on what
8 Mr. Steinmetz apparently is doing in terms of negotiating
9 settlement agreements.

10 We talked about this in detail last time. And you
11 said, but those settlement agreements can't get ultimately
12 approved without Court approval in Guernsey and that's the
13 foreign administrators job. That's fine. That doesn't
14 change the fact that he's involved up to his eyeballs in the
15 business of BSG.

16 So unless you have something else, I'm not looking
17 for a concession anymore. I will just tell you, I am making
18 a ruling and it will be memorialized in an order that Mr.
19 Steinmetz, anything he has done is fair game for purposes of
20 determining COMI. And COMI tells the relevant times
21 periods. There's plenty of cases on that. We'll get to
22 that.

23 But we still keep talking about the foreign
24 representatives versus Mr. Steinmetz, and he can sort of do
25 his thing, but they have the ultimate authority. It doesn't

1 matter for purposes of COMI. It is not a basis to restrict
2 discovery.

3 MR. HYMAN: But it does, Your Honor, if it's COMI
4 of BSGR at the time that the joint administration was -- it
5 was connected.

6 THE COURT: The time period for COMI is a
7 different issue, right, and I have zero briefing on that,
8 despite the voluminous things that I have here. And this,
9 again, goes to the whack-a-mole nature of what we've had
10 with discovery. We get through one issue and then views
11 shift, and then we go to another issue and then views shift,
12 and then we end up talking about other issues.

13 So now we're talking about COMI and timeframe.
14 I've dealt with that plenty. I'm not alone in this
15 courthouse. You can look, there's plenty of opinions to
16 talk about the relevant time for considering COMI. What I'm
17 saying is that I am overruling your objection to Mr.
18 Steinmetz saying he's not -- discovery relating to him and
19 his actions is not relevant. COMI and the cases in this
20 jurisdiction tell us what time period is relevant. It is
21 what it is what it is.

22 What I'm saying is that I am overruling your
23 objection as to Mr. Steinmetz and his involvement and,
24 therefore, the appropriateness of discovery as to what he
25 has been doing on behalf of BSG.

1 MR. HYMAN: And to be clear, because maybe I
2 wasn't. I don't think, and I know that we aren't contesting
3 -- or the joint administrators are not contesting that
4 whether Beny Steinmetz was out purporting to represent BSGR
5 and other entities is not relevant for Your Honor's
6 consideration in terms of COMI.

7 THE COURT: Well, it doesn't matter at this point.
8 I asked you whether you conceded that. I couldn't get an
9 answer. I've now made a ruling. So the ruling that will be
10 memor-- and we're going to keep track of these -- that
11 will be memorialized in the order is that discovery relating
12 to Mr. Steinmetz's activities on behalf of the Debtors are
13 relevant, period full stop, for COMI.

14 All right. So what else do we need to talk about
15 in connection with Mr. Steinmetz?

16 MR. HYMAN: Can I just clarify that for one
17 moment?

18 THE COURT: No, because it's a ruling, and it's
19 not your ruling, so you don't need to clarify it. What else
20 do you have?

21 MR. HYMAN: Is the -- can I ask if the ruling
22 requires the joint administrators to produce documents that
23 Beny Steinmetz personally has?

24 THE COURT: It -- okay, so now we're moving onto
25 the issue of control --

1 MR. HYMAN: Yes.

2 THE COURT: -- which is a separate issue and
3 separately briefed. So the rules about control -- and
4 that's what's frustrating about this ongoing discovery
5 dispute that we've been talking about for months -- is I'm
6 only applying well-established rules, right? So the rules
7 about COMI and timing; well established. The rules about
8 what's fair game when somebody's acting on behalf of a
9 corporation and/or the beneficial owner; well established.

10 The rules about control are equally well
11 established. And I have one of your articles sitting on my
12 library that talk about them, and they're 25 years old and
13 the law hasn't really changed all that much. So if they
14 have an ability to obtain those documents through the
15 exercise of their positions -- and so, you know, I'm going
16 to flummox the actual standard, but it's all the papers.

17 So if they have the ability as a legal matter and
18 possession, custody or control. And what's normally ignored
19 by folks is control. You may not have it, but you have the
20 ability to get it and ask for it; that is control. And so,
21 I can deal with that in more detail if people need, but,
22 again, I'm not reinventing the wheel. I'm not issuing any
23 sort of decisions on an issue that is unclear out there in
24 the law. It's -- this horse has been beaten to death in so
25 many opinions, I can scarcely count them.

1 So I'm not going to rely on what I've been hearing
2 thus far, which is a more myopic view of what the foreign
3 representatives have. So if they have it sitting in their
4 office, that is not pro-extensive with possession, custody
5 or control for purposes of producing documents in this
6 Chapter 15.

7 The other problem I have with all of this is that
8 you need to reach your burden of proof for purposes of
9 getting recognition. So the other way this goes is if you
10 don't produce things, and there's plenty of stuff that they
11 can raise and say we have every reason to believe X, Y and
12 Z, they haven't met their burden. You say, well, we don't
13 have this stuff, we don't really know; you're not going to
14 satisfy the burden for recognition.

15 I've never seen a case that was filed where there
16 was such a desire to not move forward with recognition. So
17 that's the other problem you're ultimately going to face, is
18 your ability to satisfy your burden for proving recognition,
19 which is, again, well established and applicable. There's
20 tons of decisions, so I won't beat that horse to death.

21 So is there anything specifically on possession,
22 custody or control that we need to address here today?

23 MR. HYMAN: All right. If your ruling is as it
24 stood, Your Honor, I don't believe that there is, but I
25 think that we will take Your Honor's ruling to heart. There

1 has never, notwithstanding the appearances and the delay in
2 discovery, there has never been intend on anybody's part to
3 delay discovery. We absolutely know what the burden is. I
4 think you will hear --

5 THE COURT: Well, that -- I never know what's
6 going on behind the scenes. I only see what positions
7 people take in course and the progress of the case. I --
8 that's a hazard of the job. But all I can say is, this case
9 has not moved forward in the way that other Chapter 15s do;
10 it's in the statute, the need for speed in Chapter 15. And
11 most parties come, consistent with that, and say we have
12 issues about COMI; and, therefore, what do you need, we're
13 going to get it done, we're going to come in.

14 And so, there's just been a series of positions
15 taken by the administrators that basically really don't seem
16 to have a whole lot of merit to slow discovery down and it
17 really just involved me applying in detail very well-
18 established principles of law. And then we leave, I think
19 we have an understanding, and then people come back and say,
20 well, nothing was produced or well, Mr. Steinmetz, we
21 thought we solved it, but we didn't solve it.

22 And so, that's why this order is going to be blow-
23 by-blow-by-blow, because I think it's not -- it's just not
24 the way the system is supposed to work. So the order should
25 contain a ruling that -- that the Petitioners are required

1 to produce documents under the possession, custody and
2 control. Please find the most pedestrian well-traveled
3 version of this standard that I'm applying here, but that
4 you can quote it for an applicable; if not, I'll find one.
5 And, again, I'm just applying the applicable law.

6 MR. HYMAN: We appreciate that, Your Honor.

7 THE COURT: All right. Now, before we go on to
8 the next issue, I know you did want to talk about the status
9 of documents and scheduling and where things are, and I know
10 he had addressed it, so I didn't want to leave something on
11 Mr. Steinmetz.

12 MR. ROSENTHAL: Just on Mr. Steinmetz, Your Honor,
13 just because, again, I'm just kind of trying to head off the
14 next roadblock, which is, you know, for them to come back
15 and say, well, we actually don't have the practical ability.
16 And there is -- there's four factors that the Royal Park
17 court cited, and they're all applicable here. They all
18 exist here.

19 And the Royal Park court basically then said,
20 okay, I'm entering a finding that you have a practical
21 ability; go do it. Because I don't want them to come back
22 and say -- and the Royal Park court, in fact, said this
23 isn't a serial opportunity to kind of keep raising a new
24 roadblock each time.

25 And the four factors are: number one, financial

1 interest. I think the Court can find that he has a
2 financial interest based on the record; this is not
3 contested. Number two, did things acting as agent on behalf
4 of the company. We've put in the record; it hasn't been
5 contested. Number three, the fact that this person has
6 participated in discovery voluntarily on behalf of the
7 corporation in the past; we've put in that record.

8 And number four -- and actually, this is what
9 really disturbed the court in Royal Park -- is they never
10 even asked prior to coming to court and saying that we don't
11 have control. And we said, the least that you can do is,
12 before coming to court, is to show us evidence that you've
13 asked them to cooperate and they refused.

14 And I think we have all four of those factors
15 here; that just to avoid kind of a serial re-litigation of
16 this, I think it's appropriate for the Court to say, look,
17 this test is met under these circumstances.

18 MR. HYMAN: Your Honor, Royal Park was determined
19 in the context of five directors that were currently
20 directors. There were the economic interests; was the
21 economic interest or ability of the defendant to hire or
22 fire those directors.

23 This is, while there may be or not be an economic
24 interest on the part of Beny Steinmetz, it doesn't come
25 close to meeting the standards in Royal Park. And to say so

1 is disingenuous.

2 THE COURT: Well, let me ask you, does he have a
3 financial interest? I have seen a lot of information
4 provided to me at various hearings addressing that issue and
5 going through, in detail, him being the beneficial owner
6 through various different entities; and, therefore, having a
7 financial interest would -- which would explain his
8 extensive level of involvement. And, indeed, nobody on your
9 side has ever identified anybody else who's acting on behalf
10 of BSGR.

11 MR. HYMAN: The joint administrators are.

12 THE COURT: No, no. Before the joint
13 administrators leading up to the joint administration, you
14 haven't identified anybody at the company who seems to be
15 doing anything, other than the joint administrators. My
16 understanding of joint administrators is that they are not
17 necessarily the only people acting and so, you've never
18 named somebody else.

19 And so, but I backtrack. So I do have information
20 that has been provided on all the four factors that are just
21 identified, do you have any information factually about the
22 financial interest question; do you have anything to say
23 factually on that? Do you dispute he has a financial
24 interest?

25 MR. HYMAN: Ultimately, we read the press reports.

1 He may have an ultimate financial interest in his
2 subsidiary. However, when you look at Royal Park, the
3 financial interest went to control, and for the ability of
4 the party that was requesting those documents to exercise
5 some leverage over the party that had to comply. Here, that
6 isn't the case.

7 THE COURT: Are you saying, so he's involved in
8 negotiating the original deal with Guinea. He's involved in
9 negotiating the purported settlement, which I know you say
10 the foreign representatives need to approve -- I don't
11 disagree with that for purposes of the proceeding in
12 Guernsey -- but you say somehow, he doesn't have any degree
13 of control?

14 Again, you're -- so what I'm hearing is that
15 you're telling me right now that when you say he may have a
16 financial, that you don't dispute what's been provided to me
17 that he has a beneficial financial interest in the Debtor.

18 MR. HYMAN: We do not dispute that he may be the
19 ultimate beneficiary.

20 THE COURT: No, may be doesn't help me. May be is
21 -- may be is conditional. It means nothing. A lot of
22 things may be. The Mets may be better next year, but I know
23 better than to actually hook my wagon to that.

24 MR. HYMAN: So do I, Your Honor.

25 THE COURT: So I can't work with that. So I

1 haven't been presented with anything that disputes the
2 factual picture that's been presented to me about his
3 beneficial financial interests.

4 MR. HYMAN: We do not know that there is anybody
5 else that owns the equity interests or beneficial interests
6 of Balda.

7 THE COURT: And as to the second one, I'm not
8 hearing anything that disputes that he's acted as an agent
9 of BSG.

10 MR. HYMAN: He certainly is not authorized to act
11 as an agent, and he's not authorized to act as an agent
12 today.

13 THE COURT: Okay. But, again, we keep having
14 these discussions, and then you bring me back to a
15 particular characterization of an issue that's where you
16 want to fight this battle, which is after the Chapter 15 was
17 filed.

18 My understanding is that you don't dispute that he
19 negotiated the ultimate deal with Guinea, that is really
20 kind of the Debtors' business, or that he is involved in
21 trying to reach a settlement of the dispute with Guinea.
22 Again, a settlement you say he cannot -- that cannot be
23 finalized without the approval of the foreign
24 representatives, but that he was doing the negotiating.

25 MR. HYMAN: And may never be finalized.

1 THE COURT: No, no. I'm asking factual questions,
2 so I'm not asking for you to give me your gloss on what they
3 all mean. I'm asking very specific factual questions.

4 MR. HYMAN: Nobody denies that Mr. Steinmetz was
5 off negotiating a deal that he was not authorized to
6 negotiate. That settlement ultimately needs to be approved
7 -- I know that Your Honor is aware of that -- and reviewed
8 and revised. It may be ultimately agreed to in its current
9 form; it may never be agreed to. It may be agreed to in an
10 alternative form.

11 THE COURT: But he's holding himself out as BSG in
12 the context of those settlement discussions.

13 MR. HYMAN: But not with any authorization from
14 the joint administrators or BSG.

15 THE COURT: That's fine. I understand that
16 position. But it doesn't change the facts that he's holding
17 himself out, and clearly has apparent authority to anybody
18 who's talking to him, including the -- an independent
19 sovereign country.

20 So let me move on to number three. I realize you
21 were just presented with information dealing with his
22 involvement in discovery and complying with discovery in
23 other proceedings, including the tribunal -- and I don't
24 want to misstate. Could you remind me what the exact title
25 of the proceeding is?

1 MR. ROSENTHAL: Sure. So he provided documents or
2 searched for documents in connection with the LCIA
3 arbitration. He also provided live testimony in the ICSID
4 arbitration, and he provided multiple witness statements as
5 a witness in both the LCIA and the ICSID arbitration. I
6 think these are facts. I can't imagine they don't know
7 because it's been so part of the history of this company for
8 the last few years.

9 THE COURT: All right. Do you dispute any of
10 that?

11 MR. HYMAN: Only to point out that the dates are
12 prior to the joint administration, at which time nobody
13 other than the joint administrators have any ability to rule
14 or act on behalf of the company.

15 THE COURT: I understand that. All right. But
16 it's pretty clear he participated in the past in discovery
17 on behalf of the company in other proceedings. And so last,
18 but not least, the fourth factor: have the administrators
19 ever asked him to cooperate and provide documents that are
20 requested?

21 MR. HYMAN: To my knowledge, the joint
22 administrators are not in contact with Beny, not in contact
23 by email or by phone. There have been less than a handful
24 of meetings at which they have met Mr. Steinmetz, but that
25 is the full extent of the contact.

1 THE COURT: All right. So what I'm hearing is
2 that they have not asked him to cooperate and so -- in terms
3 of discovery sought. And so, I think all the -- I'll make a
4 finding that all four of the factors in Royal Park are
5 satisfied here, and we'll see where that gets us or doesn't
6 get us in the future.

7 All right. You wanted to talk about the status of
8 documents that are being produced and the schedule?

9 MR. HYMAN: Yup. If you wouldn't mind, Your
10 Honor, if Mr. Peters could address the Court in terms of
11 current production.

12 MR. PETERS: Your Honor, thank you again for
13 giving me an opportunity to address the Court. I just
14 thought it would be helpful really, just to understand where
15 we've got to in terms of the document production since the
16 hearing on the 29th of August.

17 As you'll recall, there's a lot of discussion
18 about the 321 documents at that hearing. And subsequent to
19 that hearing, those documents were available for production.
20 There is, as Cleary mentioned, you know, there was a lot of
21 toing and froing about the protocol, which meant that the
22 production of those documents was delayed.

23 However, we had a call with Cleary on the 12th of
24 September to try and resolve the issues over protocol. And
25 when it was clear that that wasn't going to go anywhere, and

1 it's part of the reason why we're here today, we actually
2 did agree to release the documents in conjunction with
3 authorization of the protocol, and those documents were
4 released the following day.

5 Now, subsequent to that, we've been working on
6 getting more documents to disclose. We've now got a second
7 tranche of documents, comprising 425, that are ready to go,
8 and they've been based on a targeted search on issues that
9 we know would respond directly to the 68 requests that have
10 been put to us. They deal with Asher Avidan, Capital
11 Markets, BSG Real Estate, and the (indiscernible)
12 investigations that we've undertaken.

13 There's also a third tranche of documents, and
14 that's a third of 516 documents that are going to be ready
15 to go in the next day or so, and they relate to the Standard
16 Charter Security. And there are a number of invoices that
17 clearly demonstrate that COMI is guaranteed and, again, are
18 responsive.

19 Now, I suppose you ask, what about the rest?
20 Well, we've uploaded 1.2 million documents to relativity;
21 that's significantly more than the 38,000 that were referred
22 to earlier.

23 Now, we're going through each of the 68 requests,
24 line by line individually, and coming up with key words that
25 will respond to the requests to identify responsive

1 documents. Now, that's an interesting process. When we
2 first do that, we get thousands and thousands of hits, tens
3 of thousands of hits for each request, which clearly, it's
4 just not realistic. And when we look behind that, there are
5 a significant portion that aren't responsive documents. So,
6 therefore, we need to look at ways to reduce that down to
7 documents that are purely responsive. So it's a step-by-
8 step process.

9 As things stand, we've identified documents that
10 are responsive for 35 of the 68 requests, and that's 28,000
11 documents. So that's -- you know, some of those documents
12 can be hundreds of pages long. We've now got a team of 15
13 specialist document reviewers going through the GDPR and
14 relevance and sorting and sifting on that basis. These are
15 then going to Duane Morris for them to check for legal
16 privilege, before coming back to us for final QC, at which
17 point, they can be prepped and made available.

18 Now, we expect to start that flow of documents in
19 the next week. And once it's started -- that's not the full
20 38,000 documents -- it will be a conveyor belt. So we've
21 been releasing documents for Cleary on a daily basis.

22 Now, in parallel to that, we're also looking at
23 the remaining 30 odd document requests. And by the time
24 that the 28,000 have been sifted, we will have uploaded
25 further documents that are responsive at the back end of

1 that, so the conveyer belt will continue.

2 And we expect to have all of those documents
3 disclosed, the relevant documents that have been reviewed
4 for GDPR that have been reviewed for relevant and have been
5 reviewed for legal privilege to be made available to Cleary
6 within 20 days of now.

7 Now, I'd just like to briefly touch on costs,
8 because, you know, it is relevant from our perspective. In
9 terms of the work that we're currently doing, we expect our
10 own costs, excluding our attorneys, to be somewhere in the
11 region of \$850,000 for this process. Now I know that Cleary
12 has asked that redactions are done in a particular way, and
13 we've done a few tests on that to see the effect of doing
14 that.

15 And if we go down the route that they want,
16 whereby they're asking us to redact and then put on an
17 individual redaction-by-redaction basis of description,
18 we're looking at costs in excess of \$2 million, and that's
19 obviously hugely significant. And, you know, the reality is
20 that it's not going to give them any additional information
21 that's relevant to COMI.

22 THE COURT: Well, I think we had had a discussion
23 about an attorneys-eyes-only process and order that would
24 give you an order that is important for purposes of any GDPR
25 issues and the privacy issues under the European regime, but

1 at the same time, allows a process that may be less
2 extensive and less costly.

3 And I think -- I think I had hoped, and I think I
4 said on the 29th, the parties should work on a joint
5 proposed order that would minimize regarding this process by
6 providing for attorneys-eyes-only, and hoped you would get
7 something to me in 10 days. And at the time we were
8 discussing it, I thought -- I had the sense that people
9 thought that would be useful. But, you know, that was more
10 than a month ago, and I never did get anything.

11 So my understanding is that a court order that
12 says what's necessary for purposes of the case takes things
13 out of the category 2 that we've been using as a framework
14 and would move into category 1, meaning that they've been
15 determined to be relevant for purposes of the case. And
16 essentially what it does is say that in order to deal with
17 the case efficiently, we've come up with a procedure to
18 safeguard privacy information, not make it generally
19 available and not widely disseminated.

20 And I know it's -- it probably is an American
21 concept to do attorneys-eyes/professional-eyes only, but
22 that it might be one, at least -- again, I didn't hear at
23 the time of the August 29th hearing anybody say that that
24 idea was dead in the water. But that was something I don't
25 think I've heard anything further about.

1 MR. ROSENTHAL: Your Honor, we were hopeful that
2 ultimately when we get an agreed-upon protocol, that that
3 would have the same effect. We thought we were very close.
4 We think we still are very close, with the exception of two
5 different issues. We don't think that there's an order of
6 this Court that just freely allows discovery of all GDPR
7 without some -- of all GDPR material without some
8 redactions.

9 THE COURT: No. I don't think anybody is
10 suggesting that an order resolves all GDPR issues. But I
11 think the idea was that, to the extent there was discussion
12 of different levels of redaction, that that might provide a
13 way to address that without having to redact, re-redact,
14 change redaction procedures, and provide more information so
15 as to resolve their objection without waiving your rights as
16 to how something was ultimately used or whether it was
17 ultimately made public.

18 And certainly, I don't think anybody -- and
19 certainly, I didn't and I don't think anybody took the
20 comments to mean that we're going to waive away GDPR issues
21 by virtue of that kind of an order. But rather than when
22 you began to get into very specific redaction procedures
23 that are very costly, that that's where that could be useful
24 and that the order would contain a number of very specific
25 findings about the case: involves the following parties;

1 COMI is an issue; COMI looks at the following things in
2 order to.

3 COMI, discovery in a case involving COMI would
4 include the following categories of information: the parties
5 have -- you know, there is some information that is being
6 clearly protected by GDPR that is being redacted or not
7 produced; and that this information, I think even in your
8 own papers, that said that it's less clear what's protected
9 and what's not protected.

10 And, frankly, if you're in those circumstances,
11 you really have no choice but to take the more cautious
12 route. But that, given that circumstance, the Court finds
13 that a showing has been made, for purposes of discovery,
14 that it is necessary to produce that information, but in
15 order to minimize any privacy issues, that this is the
16 procedure.

17 So that's what I had envisioned doing. Again, I'm
18 not trying to -- and I don't think anybody is, we've spent a
19 lot of time briefing GDPR issues, so I'm not trying to waive
20 away GDPR issues. I understand they're significant. I
21 appreciate counsel being here from across the pond to
22 discuss these issues, and so, I'm not -- I'm not trying to
23 waive them away.

24 But we often deal with, as you know, in Bankruptcy
25 Court, instances where there's litigation pending in many

1 forums. And so, I think what we try to be is helpful to the
2 extent that there are ways to -- that a Bankruptcy Court can
3 assist parties to not have to -- take some items off their
4 to-do list and some things that you can resolve by virtue of
5 findings in an order.

6 MR. ROSENTHAL: Your Honor, and we're going to get
7 to the protocol issues and this is one of the protocol
8 issues. What you'll find -- we think the issues with
9 respect to the protocol are relatively minor and easily
10 resolved. There are only two categories, that there is a
11 question as to whether it should be generally redacted or
12 generally unredacted; that is personal email addresses and
13 nationalities.

14 And it may be helpful in the event that Your Honor
15 rules one way or the other in respect to one of those two
16 things to include a ruling on that point. But as it relates
17 to all of the other categories, there's no dispute between
18 the parties.

19 THE COURT: All right. Because, again, I am
20 sensitive to costs. We're supposed to be in Bankruptcy
21 Court, right? People are filing for insolvency because they
22 have financial issues, whether it's an individual or a
23 company, series of companies. So certainly, I understand
24 that, and, in fact, the American discovery rules consider
25 that in terms of proportionality. And recently, that

1 concept sort of got a refresh in the rules, even though it
2 was always in the rules, just to remind folks that use of --
3 in a traditional domestic case, but I don't see why that
4 would be any different here. So certainly, that's part and
5 parcel of a protocol that's a court order.

6 But even if there are some issues that are
7 unresolved and parties essentially say, Judge, we just want
8 to reserve our rights, an order making certain findings
9 about how discovery should -- needs to proceed in a case
10 may allow parties to ultimately reserve their rights, not
11 spend unnecessary time on redaction procedures, which are
12 enormously expensive, and give you some comfort that you're
13 not going to be sued tomorrow on the basis of GDPR.

14 So that's why I was trying to sort of pitch it. I
15 know you're trying to, you know, trying to ultimately
16 resolve all issues of protocol and GDPR. But my sense is
17 what an order can do is finding this necessary for purposes
18 of the case than, you know, but I'm still not trying to
19 trample on anyone's rights, that attorneys-eyes-only is a
20 way to do that. So that's certainly the hope.

21 And I still think that would be true -- I know
22 there's a couple of categories that remain outstanding, but
23 there may be a way to produce those documents under the more
24 fulsome version, less redacted, and still preserve your
25 rights for purposes of GDPR in a finding that's saying for

1 purposes of discovery in this case, it's necessary to
2 proceed this way, consistent with Chapter 15s concerns about
3 expediting proceedings and costs, all sorts of things.

4 And, again, there are GDPR experts in the room. I
5 am not one of them. So you would tell me what that kind of
6 order, what it needs to look like and what's appropriate.
7 But certainly, I can think of some findings that we've
8 already gone through that would get us a lot of the way
9 there.

10 MR. PETERS: Thank you, Your Honor. That's really
11 helpful. I just -- and I know that Mr. Hyman says that
12 we're going to come on to a protocol. But the issues around
13 the protocol, you know, they're not about the
14 categorization. The difficulty we have isn't about the
15 categorization, per se; it's more about what Vale and Cleary
16 are asking us to do in terms of the redaction. And for
17 every single redaction, and we are talking hundreds of
18 thousands of redactions, they are asking us to put an
19 individual text box against each one to say what that
20 redaction is.

21 THE COURT: All right. No, I understand and we're
22 going to get there shortly. My thought is there are some
23 things, like personal emails is one of the categories, that
24 if I find for purposes of the case that they should be
25 produced attorneys-eyes-only, then they are -- and not

1 provided generally to the clients, to the public without
2 further order of the court -- that that's a level of
3 protection and a level of finding that still allows you to
4 preserve the issue, ultimately, while also not having you
5 even redact them in the first instance. And so, if you
6 don't redact them, even under their view of the world, no
7 redaction means no text box.

8 So even before I made a ruling on that, it would
9 sort of take that issue off the table. And also, frankly,
10 even if you don't put it in an individual text box, you'd
11 have to address it in sort of a general explanation of
12 things, and it would take that part of the process off --
13 off the list of things to do.

14 MR. PETERS: We have taken that into account in
15 our assessments of the additional time involved and then
16 have a search on that basis. But we know, obviously, you
17 know, you're fully aware of the issues and we'll deal with
18 it.

19 That's all I have to say on where we are in terms
20 of discovery. I would have liked the change -- but
21 obviously, you've made no (indiscernible) -- rebut the
22 misrepresentations based on inaccurate press reports around
23 Mr. Steinmetz's role. But, unfortunately, you've made --

24 THE COURT: Well, again, I read everything that
25 was provided to me, and I take that very seriously. So,

1 again, in discovery, it's not a trial, so I'm not making a
2 finding, but I'm making -- of any particular level of
3 involvement or particular acts. What I'm finding is that
4 there's been a basis given to me that says that Mr.
5 Steinmetz is fair game for discovery.

6 That's the way the American system works, which,
7 frankly, is different than the way a lot of other systems
8 work. And for some systems, discovery is a lot more
9 curtailed, and I recognize that. But for the American
10 system, essentially, you have a good-faith basis to say we
11 have a -- we want to know about this, this may be very
12 relevant.

13 And I found that that's satisfied. So that's --
14 and the only specific findings I think I'm making to Mr.
15 Steinmetz are the ones dealing with that Royal Park case,
16 which are very specific and really aren't necessarily --
17 they're not COMI related; they're sort of a control issue in
18 terms of what's appropriate for discovery.

19 MR. PETERS: Sure, Your Honor. I'd just like to
20 make a point regarding the repeated statements about the
21 role that Mr. Steinmetz in negotiating a deal with Guinea.
22 That is just clearly -- that is untrue. He may -- he may
23 have been involved in assisting discussions, but we got
24 notification from Dag Cramer --

25 THE COURT: You're talking about the settlement.

1 MR. PETERS: Yeah. So we got notification from
2 Dag Cramer --

3 THE COURT: Okay. No, I think what I meant was in
4 the underlying transaction to begin with, right? So there
5 was originally in a relationship, then Guinea terminated the
6 relationship, and then I know there's a settlement. And
7 what my comment was about his role in the initial
8 transaction.

9 And just to be clear, and I know he's been --
10 again, to use an often-referenced legal principle from
11 Broadway -- in the room where it happens as to settlement;
12 he's been involved. I'm not saying who had the pen and who
13 had ultimate authority, so I'm not casting any aspersions on
14 anything while the foreign representatives have been in
15 place. But I don't even, again, need to go there.

16 If he's -- when I look at COMI, I need to look at
17 where has business been going on, who's been doing what,
18 sort of going back in time. And so, that's -- I think
19 enough of a showing has been made on that. So I'm not
20 trying to be -- to parse that too finely because, frankly, I
21 don't have enough record to do that. I have enough record
22 to say he's involved enough that he's a fair game for
23 discovery.

24 MR. PETERS: Okay. Can I just ask, Your Honor,
25 please? If the Cleary's do bring this back onto the table,

1 we would like the opportunity to respond vigorously against
2 the allegations regarding settlements.

3 THE COURT: Well, I think what's been put on for
4 right now is a basis for discovery. I've made a ruling. So
5 I certainly hope, for purposes of discovery, we don't have
6 it come back on. If it ultimately becomes an issue at
7 trial, everybody preserves their rights to present as full
8 and complete and fulsome a record as you want on those
9 issues, so I'm not making any findings on the merits of any
10 of that. COMI is not in front of me today, and we'll get
11 there eventually.

12 MR. PETERS: Okay. Well, thank you for giving me
13 the opportunity to address the Court. Thank you.

14 THE COURT: Thank you.

15 MR. ROSENTHAL: Your Honor, addressing the
16 document issue. I have to say I'm extremely distressed here
17 because, you know, while Mr. Peters is not an Officer of the
18 Court, the Court has given an opportunity to address his
19 counsel rather than have him address the Court through
20 witness testimony.

21 And what we've heard today is, unfortunately,
22 quite different from what Mr. Peters stood up and told you
23 last hearing. And it's really distressing, in light of some
24 of the representations that were made leading up to these
25 hearings.

1 THE COURT: Well, here, I want to go through the
2 other merits issues and then loop back to production
3 schedule and where we are and all that stuff, right, because
4 I think the legal issues inform the production schedule. So
5 everybody reserves their rights. And, frankly, as you know,
6 judges generally are less concerned with the history of
7 discovery than they are with how do we get to the end.

8 MR. ROSENTHAL: Absolutely, Your Honor. I agree
9 with that complete. Ms. Balter is going to address the GDPR
10 issues that were most of his argument. I would address,
11 when we're done with the discovery categories, the
12 production information that we learned in some of the --
13 well, not just inconsistencies.

14 THE COURT: And I think we also have the former
15 and current directors in Onyx and that's going to involve
16 it. So let me ask, there are some nice folks who are in the
17 courtroom for an 11:30 matter. I think we are going to be
18 here for a while in this case. So my question is whether
19 now is an appropriate time to take a break or how do you
20 want to handle that, because I think we -- I mean, I'd be
21 stunned if we didn't have at least an hour. And I think,
22 you know, what beyond that, I'm not -- I have no powers of
23 prediction.

24 MR. ROSENTHAL: What I'd recommend, Your Honor,
25 just because I think that the former officers and the

1 current officers issues, the legal issues are really no
2 different in many respects that what you've already decided
3 with respect to Mr. Steinmetz. I think we could probably
4 move through those pretty quickly.

5 THE COURT: All right. So why don't we do those
6 then and take a break? All right, yeah. My understanding
7 is that -- and you can correct me if I'm wrong -- that you
8 want documents, to the extent that they're in the
9 possession, custody or control and deal with former or
10 current directors and officers, as well as Onyx, Nysco and
11 Balda, to the extent that they involve the business of BSG.

12 MR. ROSENTHAL: Exactly. And in terms of the
13 possession, custody and control standards, again, we're in
14 the Second Circuit, it's the practical ability standard, and
15 the case law is very clear that they have the --

16 THE COURT: I think we've sort of beaten that to
17 death. So let me hear from the other side because, again,
18 what I thought was important to just clarify for the record
19 before we have this conversation. It's to the extent that
20 they have possession, custody or control over those
21 documents to be practical matter and they relate to the
22 business of BSG.

23 So it's not -- if there is a document of a former
24 or current director, that they have possession, custody and
25 control of that, that does not deal with the business of

1 BSG, you're not asking for that.

2 MR. ROSENTHAL: But it has to fit within one of
3 the categories that the Court has already sustained as being
4 appropriate for discovery as being relevant.

5 THE COURT: Right.

6 MR. ROSENTHAL: But, Your Honor, one caveat. To
7 the extent that I think under the factual record that exists
8 before the Court and is, frankly, uncontested because
9 they've chosen to argue separate issues. Under the factual
10 record, I think that the Court should find, as other courts
11 have done, they have the practical ability to obtain this.
12 And, therefore, it's no longer this is just round one, and
13 round two is later on when they say, sorry, Judge, we don't
14 control this. They've already argued that control issue.

15 MR. HYMAN: Your Honor, regarding that. It's
16 impossible to rule on practicality unless there has been an
17 effort made to seek discovery of the docket and make a
18 request. So I --

19 THE COURT: Well, let me take the scope of
20 discovery, what's asked for first, and then we'll deal with
21 the control issue. So they've asked for things that would
22 fit into the discovery request, meaning it deals with BSG,
23 the business of BSG, such that it would be relevant for
24 purposes of COMI under sort of the American standard of
25 discovery. Do you have any quibble with that?

1 MR. HYMAN: Not with the scope of discovery, Your
2 Honor, but, you know, we talk about the facts that are in
3 the record. The facts that are in the record are the
4 articles that have been attached to the first letter, that
5 was a letter dated --

6 THE COURT: But I don't need to get into the
7 articles, if everyone agrees about the appropriate scope of
8 discovery and your argument is about control. So my thought
9 is that I've made a ruling as to Mr. Steinmetz about the
10 Royal Park factors. Again, this is pretty well-established
11 stuff. I don't normally make rulings about control when
12 people have discovery obligations because it's assumed, it's
13 part of the air we breathe in terms of civil cases and
14 discovery, so everyone understands what their obligation
15 are.

16 And if the foreign representative on behalf of the
17 Debtor has an ability to, as a practical matter, to get
18 documents that relate to the conduct of BSG from the former
19 directors, current directors, Onyx, Nysco and Balda, then
20 they're obligated to do that. So that's just the way it
21 works. So what is it that you want to talk about with that
22 context?

23 MR. HYMAN: Because I think that we've gotten a
24 little bit twisted in terms of economic relationship. I
25 think when you look at the cases, the economic relationship

1 is, again, the ability of the party that's requesting
2 production on a third party to exercise some leverage in an
3 economic basis over that party. Here, I think this is all
4 of the converse as it relates to the former directors.
5 There is no continuing economic relationship between BSG or
6 the joint administrators and the former -- and the former
7 directors and officers.

8 THE COURT: But that's not the test.

9 MR. HYMAN: That's a part of the test.

10 THE COURT: You've made it -- you've made it very
11 clear repeatedly, even when dealing with Mr. Steinmetz, that
12 from your client's -- from the foreign representatives point
13 of view, they are in control and other folks don't matter.
14 But for purposes of COMI, I'm supposed to look at who's
15 actually done what business and how things have developed
16 and what the center of main interest is and what's actually
17 been going on, what's the economic substance.

18 And even instances talking about change of COMI
19 from one venue to another, I have to have some understanding
20 of sort of historical things to compare it to new things to
21 find out whether that purported change in COMI is legit, is
22 done for any improper purpose, what the legal standards are
23 what they are.

24 So, again, to the extent you're relying on the
25 fact that everything changes, and the only people who are

1 relevant are the foreign representatives once they're
2 approved and, therefore, that's the lens in which to
3 understand discovery, I reject that premise.

4 MR. HYMAN: But typically, in a COMI shifting
5 case, as I understand them, Your Honor, if it's a shifting
6 of what looked like COMI in the first instance to a new
7 jurisdiction created for purposes of filing. That's not
8 what we have here.

9 THE COURT: No, I know. But what I'm saying is,
10 cases -- COMI shifting cases are relevant to the extent that
11 you're talking about people talking about timeframe and
12 saying you can cut off, this is what I do right this second,
13 and I don't anyone to look beyond that. And courts do look
14 beyond that because they look to see, well, what changed and
15 why did it change and how did it develop.

16 So, again, this is discovery. Everybody has a
17 right to be heard on the merits when and if we ever get to
18 the merits of this case. And so, again, I usually don't
19 have this kind of issues just come up repeatedly. If
20 there's emails dealing with BSG and you want to talk about
21 the relevant COMI time period, we can have that discussion.

22 But, frankly, if you look up any of the cases,
23 that will tell you what the relevant time periods are. I'm
24 not changing that; that is what it is. So through that
25 lens, whatever exists as to these category of people dealing

1 with the business of BSG, it's fair game.

2 MR. HYMAN: Except that we, you know -- in order
3 to establish possession, custody or control, we believe that
4 the burden is on the party seeking that discovery.

5 THE COURT: Do you really want to go there?

6 MR. HYMAN: No, I don't. I don't. But I want to
7 address, though, is some of the evidence that they've been
8 relying on which --

9 THE COURT: I am not taking in news articles, bits
10 of information for purposes of making value judgments in
11 this life or the next. I am looking at things to try to get
12 through discovery; that's all. So everybody reserves their
13 rights. I'm not -- judges are remarkably facile at saying
14 here's discovery and then they get to trial, just as we are
15 facile in separating our personal views and any frustrations
16 in the case leading up to trial. So it is what it is.
17 We'll get there. Everybody will get a fair shake on the
18 merits of anything they want to argue.

19 But for purposes of discovery, my ruling is just
20 what I said, which is that viewed through the lens of COMI
21 and the relevant time period -- that is well-established in
22 cases in the Southern District, and including a few that
23 I've issued, decisions on Chapter 15 cases, everybody knows
24 what the period is; that if there's information within the
25 possession, custody or control under the Second Circuit

1 standards that deals with these folks -- current and former
2 directors, officers, Onyx, Nysco, Balda -- that is relevant
3 to the business of BSG and COMI, I find that's appropriate
4 to produce and that I'm ordering to be produced.

5 And so, I'd ask that that go into the proposed
6 order that's going to be submitted after today's hearing.

7 MR. HYMAN: Your Honor --

8 THE COURT: So for that, given that I have less
9 information, I'm going to decline to get into Royal Park
10 issues for right now, in terms of it's a more complicated
11 web of things to figure out, but I can't imagine anybody
12 wants to have further discussions about what I think.
13 Again, we're making something overly complicated that, for
14 purposes of discovery, is just not that complicated.

15 So if a deal -- I mean, so Onyx was alleged to be
16 back office support. My understanding of the record is that
17 they used to be called BSG Management Services, Ltd. So, I
18 mean, some of these things are just -- I'm not sure why
19 we're fighting about them. So, again, you view them through
20 the lens of COMI and the relevant time periods for COMI,
21 fine, but it's fair game.

22 MR. HYMAN: Your Honor, as it relates to Onyx,
23 there is no contractual relationship with Onyx.

24 THE COURT: I know --

25 MR. HYMAN: If Onyx wants --

1 THE COURT: -- because you always talk about the
2 present tense, right now. I understand that, but, again,
3 I'm repeating myself. There are plenty of other issues to
4 get through. My ruling is my ruling, and it serves nobody's
5 interest to go back and forth on these things. So you all
6 are entitled to a decision. You may agree with it, you may
7 not agree with it -- that's what Courts of Appeals are for,
8 but we've got to move the case forward.

9 So I think with that, we've gotten through those
10 two issues that are related -- Mr. Steinmetz and the one we
11 just discussed. We need to go through the GDPR protocol
12 issues.

13 MR. ROSENTHAL: The third one, Your Honor, is
14 actually subsumed within the last one. But we have an
15 additional argument, which was the current directors -- you
16 lumped the current and former together. But there is a
17 current director, which is Mr. Cramer, who, in addition to
18 everything else is a current director of the company.

19 THE COURT: Well, I'll say what I said to him.
20 There's -- it's well established what the relevant time
21 period is for COMI. And so I have nothing new or, you know,
22 of value to add to what's well established in Circuit
23 precedent and in this Court's --

24 MR. ROSENTHAL: I'll just -- if I can just note on
25 the record, Your Honor, just with respect to Onyx because

1 maybe Mr. Hyman isn't aware, but Onyx is run by Mr. Cramer,
2 their director.

3 THE COURT: Well, I've already made a ruling. I
4 don't think we need to go there, so here's what I'd like to
5 do. We do need to talk about the other issues, which I
6 think are somewhat different than the ones we've covered
7 thus far. My thought is to talk to you nice people after
8 lunch, so why don't we come back at 2:00, rather than have
9 you come back and wait around. And so, I think that that'll
10 work.

11 And so, unless anybody has any parting wisdom
12 where it would actually be of use to you before you go off
13 to lunch, we'll just circle back at that point. All right.
14 Thank you very much. All right.

15 And CourtCall Operator, I'm going to keep the line
16 open, obviously because we have another matter that's on for
17 11:30, and that matter will be done before 2:00. And we
18 will then call back at 2:00, and anybody who is on the phone
19 for the BSG matter can call back. You can either just stay
20 on the line or call back in at that time. All right?

21 COURTCALL OPERATOR: Yes, Your Honor.

22 THE COURT: Thank you very much.

23 COURTCALL OPERATOR: Thank you.

24 THE COURT: I sometimes forget to give that speech
25 and there's confusion that results, so I have to remind

1 myself that that's an important thing to straighten out.

2 (Recess)

3 THE COURT: We're back on the record in BSG
4 Resources Limited, a Chapter 15 case to continue our
5 discussion about the issues raised in discovery in
6 connection with initially the motion for a protective order
7 and then the extensive letters back and forth on a variety
8 of issues.

9 We got through a number of issues this morning and
10 so I think we were going to pick up with the GDPR protocol
11 and the issues that are identified in the letters on that.

12 MR. ROSENTHAL: That's right, Your Honor. And as
13 I mentioned, my colleague Ms. Balter will address that.

14 MS. BALTER: Good morning, Your Honor. We wrote
15 to Your Honor after an extensive back and forth because
16 we're at an impasse on several GDPR issues. There are three
17 issues that are principally in dispute. The first issue
18 concerns the joint administrator's responsibility to
19 identify on a specific basis the categories of personal data
20 that they've adapted. The joint administrators have agreed
21 that where a document contains redacted personal information
22 they will provide a log and that log will identify the
23 category of personal information.

24 The issue comes up where a single document would
25 have multiple redactions. In that case the log would

1 identify the various categories of redactions that the joint
2 administrators say that they won't identify for us which
3 category concerns which redaction. They're now saying that
4 this would add an additional million dollars to discovery.
5 Your Honor, we think that's inconceivable. This is work
6 that has to be done in the first place for them to simply
7 identify the category of data that's been redacted.

8 THE COURT: Well, let me ask you. I heard a
9 question before about text boxes and I wasn't quite sure if
10 that was the same issue or from a different angle or a
11 different issue. Because, obviously, we've all seen
12 privileged logs and privileged logs may say Page 20, Line 2,
13 this redaction -- or people can do it on documents, they can
14 do it lots of different ways. So, maybe you can help me
15 through that issue.

16 MS. BALTER: Your Honor, we'd be happy for them to
17 do it in either way. Either to specify directly on the
18 document itself that they're redacting -- you know, do the
19 redaction box and write in the category of personal data
20 that's being redacted on the document if they'd prefer to do
21 it with a log. We just want to make sure that that log does
22 identify the page and the particular redaction that
23 corresponds with that category so that we don't have to go
24 back and reinvent the wheel.

25 THE COURT: So you can see the context.

1 MS. BALTER: Exactly.

2 THE COURT: All right. Would you be okay with, as
3 might be the case, certain things that if you can tell by
4 the context -- so, for example, if you have an email and you
5 have a CC, and you have a blacked out thing -- let's just
6 use that as a hypothetical for a second, you could pretty
7 much tell from the context that that's an email that's been
8 redacted and that whatever your general -- their general
9 comment about it, it would be covered by -- you know, they
10 could say all email address redacted are based on this,
11 that, and the other thing.

12 So, I would assume that if there was certain
13 circumstances where it's very clear by context. Now, that
14 may obviously not be all circumstances but there might be a
15 limited number where that would be true.

16 MS. BALTER: I can see that circumstance where
17 you'd have a CC box in there and numerous redactions and
18 they say we've redacted all of these because they're
19 personal emails. That would be the category. I think the
20 issue comes up where there's something in the CC box,
21 there's something on Page 3 of the document, there's
22 something on Page 5 of the document and it listed out two to
23 three categories of information and we have to go back and
24 reconstruct them.

25 As we say, we can figure out that one is an email

1 address but for the other two we'd have to, again, just
2 reinvent the wheel. That's information that they know when
3 they're doing the redaction itself, so it's easy enough for
4 them to just identify it for us so that we don't have the
5 burden. The burden should be on the redacting party.

6 THE COURT: All right. So, let me ask, does it
7 makes sense to go back and forth in each one of these until
8 we sort of get an answer on each rather than take them as a
9 group? What would you prefer? I don't know how long your -
10 -

11 MS. BALTER: I think that makes sense, Your Honor.

12 THE COURT: All right. I don't want to -- if your
13 whole presentation is not too long, I'm happy to take them
14 all it once. But it sounds like we'll do it one at a time.
15 So, let's talk about this issue about specific data, and
16 logs, and text boxes and all sorts of exciting things that
17 everybody loves to talk about.

18 MR. HYMAN: Absolutely, Your Honor. And in
19 advance to today, we made an example of two documents, one
20 which would be produced in the format that the joint
21 administrators have been going through and doing their
22 production to date, and another as would be produced under
23 the suggestion.

24 THE COURT: All right. Do you have a copy for
25 counsel?

1 MR. HYMAN: I do, I do.

2 THE COURT: All right, great. Thank you.

3 MR. HYMAN: May I approach?

4 THE COURT: Thank you. All right. So I have the
5 documents and I just have this ticket that says Vale
6 Proposal and JA Proposal.

7 MR. HYMAN: All right. So, this is, Your Honor,
8 an example of just one of thousands and thousands of
9 documents that are being produced. And you can see,
10 obviously, this is an example that has quite a bit of
11 personal data in it.

12 As those parties that are going through the
13 documents in the first instance to review them for GDPR
14 information, on their screen it shows a drop box, which is
15 what you were referring to. The drop box allows them to
16 check a box for a specific category of personal data that
17 they are redacting. It does not require them when they
18 redact it to go in and type specifically for each redaction
19 what that type of information is.

20 When we're talking about thousands of documents in
21 the form of the Vale proposal, that requires for each
22 redaction, rather than just hitting a box that redacts the
23 information and clicking another box that has the category
24 of information, it requires them to go in manually for each
25 one of the redactions and identify it.

1 THE COURT: Now, let me ask you. This is a form
2 so this may not be very illuminating for other more
3 narrative documents. But certainly this form, to the extent
4 it has a date of birth line, and a nationality line, and a
5 column for signatures, you can tell from the context what
6 these are. So, and that's why I ask the question. I think
7 I'd be fine and I suspect the other side would be fine when
8 in that context it's very clear, so you don't need to
9 specify that it's somebody's date of birth because, in fact,
10 you can tell that from the context. It's very clear.

11 I guess the harder thing is when you have a memo.
12 And so you have a memo and it has sort of an ongoing
13 narrative discussion, perhaps lengthy and it has various
14 things redacted and you can't tell what a various thing is
15 from the context.

16 MR. HYMAN: In our proposal, in the joint
17 administrator's proposal of the redactions this would still
18 be accompanied by a log and the log would identify the
19 different types of categories -- of --

20 THE COURT: Would it identify it by page so you
21 can actually tell what's what? I mean, I think that that's
22 right.

23 MR. HYMAN: It does not because that is another
24 level of expense to go through. The way --

25 THE COURT: But if you can't tell from the context

1 what it is that's redacted, then I think -- isn't that
2 relevant information for purposes of the privileged log when
3 you have an invocation of privilege? And we're not even
4 talking about Chapter 15, we're just talking about standard
5 -- standard privileged stuff and the local rules on that.
6 That you'd be able to identify and say, well, this is what's
7 redacted because we're telling you what it is because you
8 wouldn't know from the context and you can't...

9 So, for example, if somebody's reading a paragraph
10 in a memo and that paragraph turns out to either, on the one
11 hand, be incredibly relevant to various things that the
12 other side is interested in or not at all relevant, they
13 might say, I'm curious what it was that was redacted from
14 the paragraph. Or given that it's not very exciting and the
15 redaction is this kind of redaction, I could care less.

16 MR. HYMAN: For these types of documents and these
17 types of redactions, which are -- they're set forth in the
18 proposal for the protocol, right? They're very limited
19 types of information. It doesn't recall -- it doesn't
20 require blocks of redaction that would not otherwise be
21 relatively obvious from the context.

22 THE COURT: My hypothetical assumes that you can't
23 figure out from the context what it is. So, if a memo said,
24 we met with an individual, comma, redacted two words and an
25 initial, comma, at so-and-so place and whatever to

1 discuss... Well, you could tell from the context what that
2 is. But if you had, say, two lines redacted and the lines
3 are completely redacted and you couldn't tell what they are,
4 do they contain information that's names? Is it privileged
5 legal information? What is it? And you don't tie what the
6 justification is to the area of the document, then people
7 completely see as to what it is.

8 MR. HYMAN: To the extent that it was privileged
9 information, that is absolutely included in the log and
10 identified specifically, is that correct?

11 MR. HITCHING: Your Honor, Jarret Hitching. To
12 the extent something's being redacted for privilege, that is
13 receiving a separate designation that says Redacted For
14 Privilege versus Redacted for GDPR.

15 THE COURT: Right, but what I'm saying is if you
16 can't tell -- so privilege is fine, but if you can't tell
17 what the GDPR redaction is from the context, I would think
18 that it makes sense to identify that. Again, this sample is
19 sort of the -- kind of the layup, right? Because you can
20 tell date of birth, nationality, signature, so you know.

21 So, you had me at hello on this. I'm fine with
22 this kind of form of redaction, your proposal with this kind
23 of document. But I am thinking about ones that are not
24 essentially forms where the box you're filling in tells you
25 the answer of what's redacted. And I don't know -- do you

1 have any other samples of things that are redacted that
2 might be harder calls?

3 MR. HYMAN: I don't have any samples with me, Your
4 Honor, though. But what would accompany our version of the
5 protocol would be a schedule, a log at the end that
6 identifies the types of personal information. We think it's
7 unlike --

8 THE COURT: I understand that. But that isn't...
9 Again, what the whole point of a log is, which is often
10 overlooked, is that it gives enough information so people
11 can decide what they want to go to war over, right? And so
12 some things they may say, well, I really don't care about
13 this. That's what discovery is always about. Which is
14 saying you can either write about things theoretically, in
15 which case we'd all have to quit our day jobs and just do
16 that, or you can say what is a practical matter do I really
17 care about? And so that's why producing documents is
18 usually helpful when fighting about what's in the documents.

19 And that's why when talking about privilege, the
20 additional -- the only real point for those logs is that
21 somebody can say, well, I can gauge what that is and whether
22 I care enough to fight about it. Or if I'm going to fight
23 about it, whether I can lump in it with other things or
24 whether it's a one-off, it informs the rest of the process.

25 So, for this stuff I'm fine. When you can look at

1 it and say I know what's been redacted, I have no problem
2 with it. But if -- and, again, see, the problem is without
3 some example I don't really know how this would play out.
4 But so my concern is instances where the other side can't
5 figure out what was redacted and, therefore, isn't in a
6 position to make an informed decision. And so that'll lead
7 to further discovery in litigation. And so that's what I'm
8 worried about.

9 Again, this doesn't bother me. If there are forms
10 that are like this, again, I don't think -- she'll correct
11 me if I'm wrong, but I don't think that's what they're
12 worried about that.

13 MR. HYMAN: No, I appreciate that, Your Honor. We
14 don't think that's what they're worried about either. I
15 think that we would argue, though, for virtually all
16 instances you should -- in matching it up with the log that
17 attends it, you should very easily be able to determine what
18 information was redacted.

19 We do include a proposal or procedure in the
20 protocol to the extent there are any disputes as to whether
21 information should have been excluded or not excluded to
22 designated certain individuals, and somebody has a direct
23 phone line to somebody and can answer a question. I guess
24 the concern that I have is, in an effort to try to save some
25 costs and "expediate" the production --

1 THE COURT: I understand that, I understand that.
2 But it's hard for me to evaluate what you're saying without
3 seeing the documents. Again, if the context is clear, then
4 the context is clear. Then nobody needs to waste the time.
5 But if the context is not clear, then the question is well,
6 would it be helpful? And, frankly, to comply with a -- what
7 a privileged log is supposed to do, which gives you -- i.e.,
8 gives me enough information so I can assess the basis of the
9 privilege. If you have a context that doesn't inform the
10 redaction and you might challenge it if it's certain kinds
11 of information but you might not challenge it if it's
12 others, I don't know how you'd make that decision without
13 it.

14 So, my thought is to say that where context is
15 clear, I'm fine with the way you're doing it. But where
16 context is not clear and nobody will be able to figure out
17 what's redacted, that the log -- you can do it any way you
18 want but I would imagine it's least expensive to just have
19 the log say Page 28, personal information, you know, and
20 just identify what the personal information is just so we
21 don't have to spend -- so this isn't the opening salvo of
22 another extensive fight on discovery, which is also
23 expensive. So, that's what...

24 Now, if you want to prepare a couple of samples
25 where you think there's some specific guidance you want from

1 the Court and say, hey, look, in this sample we can tell you
2 this is the kind of thing we don't want to do and we think
3 we can demonstrate that to you, I'm happy to look at the
4 samples. But if it can't -- again, my hypothetical assumes
5 that you can't tell by the context.

6 MR. HYMAN: Yeah, I think that what we're
7 concerned about is that we will have a dispute as to
8 judgment calls, and there will be just a continuing effort
9 to require us to go through and identify information. But I
10 take your point, Your Honor. Unfortunately, the way the
11 system works today is it would be very easy if when the log
12 was produced, the log identified the types of personal
13 information in the order in which they were redacted from
14 the document. That would eliminate all issues.
15 Unfortunately --

16 THE COURT: Listen, there's lots of ways to do
17 this. And so, for example, you don't produce a privileged
18 log that says Privileged and that's all it says. There are
19 different kinds of privilege. And so you've got to give
20 enough information to somebody to make an intelligent
21 decision to think about the issues.

22 Now, I don't know if there's any distinction
23 between what people have been talking about for Category 1
24 versus Category 2 on this and whether that distinction is --
25 let me ask Vale's counsel if that distinction is anything we

1 can use in this context to try to advance the ball.

2 MS. BALTER: Your Honor, I don't think that
3 distinction will advance the ball here because for Category
4 1 data there's a presumption that it's relevant to the
5 dispute and that they can redact it. For Category 2 data,
6 the presumption is the opposite. That it is relevant to the
7 dispute and that it should not generally be redacted. And
8 where they do redact that, they have to provide an
9 explanation.

10 So, this is largely going to be about Category 1
11 data. And in that case, it's (indiscernible) burden to
12 raise any kind of objection. And so as the redacting party,
13 we think that the onus should be on them to facilitate our
14 understanding and to make sure that we can raise an
15 objection where necessary.

16 THE COURT: Well, let me ask you. Right, there's
17 a lot of different ways judges deal with discovery and some
18 of it has to do with what parties are willing to live with
19 in terms of re-review and re-redacting, which is sort of a
20 nightmare scenario that I daily not like to be in, but
21 sometimes people are willing to assume that risk.

22 So, if Category 1 is about things that clearly are
23 covered by the GDPR and so there's not really a debate about
24 that, so from their point of view it's in a stronger
25 position, does it make sense to at least let them go ahead

1 and do some tranches that way and then we can have a further
2 conversation? But it's caveat emptor. This is what they're
3 suggesting. And if it turns out it doesn't work, then it
4 doesn't work and we're going to have to go -- we're going to
5 have to take one step forward to take, you know -- I mean,
6 we're going to have to take a step back before we take
7 another step forward.

8 MS. BALTER: I think the issue, Your Honor, is we
9 just don't want to kick the can down the road any further.
10 We've been negotiating this issue for over a month at the
11 very least now. As you said, we're fine with this kind of
12 document but this is for layup. We have received so few
13 documents that it's hard for us to look at a lot of
14 examples. But we don't want to --

15 THE COURT: Do you have anything handy that I
16 could look at? Again, I'm putting you on the spot. Fine if
17 you don't. But where -- again, because the devil's in the
18 details, and I'm -- it's always -- I always talk to lawyers
19 about how it's terrible to have to fight about theoretical
20 rights rather than practical things because then you really
21 have to raise issue. But it's the same for judges, right?
22 If I can't sort of figure out what it looks like as a
23 practicality, then I'm sort of theoretically doing
24 something. And then my utility and my -- what I hope for is
25 accuracy in trying to figure out a just result goes down

1 considerably. So, my batting average isn't as good. So, I
2 don't know if you have anything that might inform this
3 particular discussion.

4 MS. BALTER: Your Honor, we don't right now. I
5 think that's largely a product of the fact that only 211
6 documents have been produced to us and not many of them
7 implicated GDPR issues to begin with. So, we just haven't
8 had the kind of production that gives us the insight we
9 need. But we also are concerned about a situation where
10 we'd be asking them to reproduce things, we can imagine,
11 like the joint administration will come back and complain
12 about the expense there.

13 THE COURT: Yeah. Well, but --

14 MS. BALTER: So, we want to get this resolved so
15 that we can really move forward with document production.

16 MR. HYMAN: Your Honor, the argument that they
17 made in their letter with respect to personal email
18 addresses and nationality was that it was so crucial to the
19 determination of Comey. Personal information or personal
20 email addresses and nationality could relate to numerous
21 people, whether they're connected to this case or
22 unconnected to this case.

23 THE COURT: We've segued off to a different topic,
24 right?

25 MR. HYMAN: Okay. We have. So, let's go --

1 THE COURT: I mean, right? Because we're talking
2 -- I think we were talking about redaction and now we're
3 going to substance, which is can we redact this stuff and
4 what's the presumption and all that sort of stuff in terms
5 of whether it's tied to the case.

6 MR. HYMAN: Right.

7 THE COURT: So, here let me make a suggestion and
8 you'll tell me whether you can live with it. I'm willing to
9 go along with your proposal as an interim step but with one
10 large caveat, which is if it becomes a problem and they say
11 we can't -- so they can take a document and they can say I
12 have this letter and here are some things that are redacted,
13 and we can't figure it out, and this is exactly what we were
14 worried about, then you may have to reprocess that document
15 or categories of documents that are like that document.

16 MR. HYMAN: Your Honor, Jarret Hitchings is more
17 than available to answer any phone calls as it relates in
18 that regard.

19 THE COURT: No, no, no, but that -- you're not
20 answering my question. You're answering a question I didn't
21 ask that's a better question for you. So, I'm telling you
22 if that happens and then it turns out they say this is the
23 problem, we addressed it at the hearing, it turns out it
24 really is a problem. This is redacted. We don't know among
25 the laundry list of things that are identified what the

1 redaction is. We can't make an intelligent decision.
2 Looking at this document, it implicates a lot of things we
3 care about and we can imagine a whole bunch of scenarios,
4 and this is not the only document. We've got a couple
5 samples, and we need to go back -- we need them to go back
6 and reprocess the documents.

7 MR. HYMAN: Absolutely.

8 THE COURT: All right. Because that's -- and,
9 again, that means that sometimes you can pay upfront or you
10 can pay later. I don't know. But that does leave you
11 vulnerable to that problem.

12 MS. BALTER: Your Honor, just to clarify one
13 point. That wouldn't be just for the particular documents
14 that we use. I mean --

15 THE COURT: Well, if you come back and you say --
16 and it's always great as a lawyer to be able to do this, by
17 the way. So, for your own personal career moment where you
18 can say, Judge, the thing we told you was going to happen,
19 it has happened. And so then you can make your case. And
20 so I'm not going to preclude you from doing that. What I'm
21 hearing is they think it's not going to be that big an issue
22 and that if you pick up the phone and there may be a stray
23 thing here or there, that you can work through it.

24 And if that's the case, that's the case. But if
25 it's not the case, then you pick up the phone and you say,

1 I've got 200 of these documents and I can't -- it's the same
2 problem over and over again. It's exactly what we said.
3 Then I will not hold it against you that they were already
4 processed a particular way. Again, it's caveat emptor. You
5 know, buyer beware. If you make this suggestion and it
6 works out the way you want, great. If it doesn't, then you
7 have every right to come back and say we told you this was
8 going to -- we suspected this was going to be a problem and
9 we're back.

10 So, it would not be necessarily limited to one
11 document. It would be limited to whatever -- whatever the
12 shoe fits. That well-known legal doctrine.

13 MS. BALTER: We'll make sure that if it's --
14 whatever shoe fits doctrine goes to -- if this seems like
15 it's going to be a problem, that we're making sure that it's
16 applied.

17 THE COURT: Yes, and here's --

18 MS. BALTER: And not just twisting our document --
19 if they don't come back and say, well, we can't apply this
20 to all the rest of the documents. We have to process all
21 the documents we processed before.

22 THE COURT: No, you reserve all your rights. And
23 what I would suggest is that because all of you have better
24 things to do than to sort of be mired endlessly in discovery
25 that -- I heard a mention of tranches of documents being

1 produced. That as the documents are produced, that you all
2 talk to one another about it. And so if this -- if you get
3 documents and say this is a really big problem, we need to
4 get in front of this, you talk to each other and you say,
5 hey, what are you going to do to fix the concern we have?
6 Maybe you fix it, maybe you don't. If you don't and it's a
7 big problem, then you call chambers, set up a call and we'll
8 essentially continue this same discussion.

9 So, that would -- and it sounds like they can live
10 with that because they think as it goes forward it won't be
11 that kind of a problem. You have your doubts and I,
12 frankly, don't know enough to make an intelligent decision.
13 But as long as they're willing to live with the "we need to
14 take a step back" approach and reserve your rights on that,
15 then I think we'll see how it goes.

16 MR. HYMAN: Thank you, Your Honor.

17 THE COURT: All right. So, I think -- let me then
18 hear from Vale's counsel. There were three issues. That's
19 number one.

20 MS. BALTER: Right. The second issue --

21 THE COURT: By the way, I would think we could put
22 this all -- everything in an order. So, we could -- you
23 know, so we've addressed the things this morning, they're
24 going to go into an order. This would go as to the
25 redaction of personal data on a specific rather than general

1 basis under GDPR protocols. Joint administration proposes
2 the following. The Court will provisionally -- it will use
3 -- will adopt the joint administrator's proposal with Vale
4 reserving all of its rights if the lack of more specific
5 identifying a thing for each bit of information is
6 problematic for purposes of protecting your rights to assert
7 the challenge to privilege or something else, then you
8 reserve the right and the Court will make any rulings in the
9 future on that as if the matter was raised in the first
10 instance.

11 I'm sure you can wordsmith that better than what I
12 just threw out there. But I think, again, just so we all
13 have our own go-by going forward, I think the order will
14 sort of become, hopefully, one stop shopping so that we
15 don't end up mired endlessly in discovery, which is nobody's
16 goal. So, all right, as to Issue Number 2?

17 MS. BALTER: Right. So, the second issue, Your
18 Honor, is whether personal email addresses and nationality
19 or association with country should fall under Category 1 or
20 Category 2 of personal data. I touched on this. Category 1
21 is data that is presumed unnecessary to resolution of the
22 dispute. And so as a general matter that data will be
23 redacted.

24 Category 2 of personal data is data that is
25 presumed to be necessary to resolution of the issues in

1 dispute and so that data (indiscernible) will generally not
2 be redacted. We're talking about one stop shopping and you
3 had mentioned something similar to this earlier. I think
4 this entire issue could be resolved if Your Honor has an
5 order that says that these issues, personal email addresses
6 and nationality or association with country are relevant to
7 the resolution of the dispute, that would provide all the
8 protection that they need under GDPR and we don't even have
9 to worry about redaction in that circumstance.

10 THE COURT: All right. All right, anything else
11 from Vale on that issue?

12 MS. BALTER: Yes, Your Honor. That said, both
13 subjects are critical to Comey and they're also critical
14 subjects of discovery. The joint administrators have, in
15 fact, not even tried to argue that nationality or
16 association with country is not relevant. They merely say
17 that it's inconceivable that Vale wouldn't know the
18 nationality of the directors, officers, and other employees
19 of BSGR.

20 Now, Your Honor, even if that were true, which is
21 impossible for us to assess because right now the joint
22 administrators have not even provided us with documents
23 sufficient to identify the directors and officers of BSGR.
24 But even if that were true, it doesn't change the fact that
25 this is directly relevant to the Comey inquiry, and that it

1 doesn't justify presumptively redacting this data for
2 purposes of GDPR.

3 THE COURT: What about personal email? I was a
4 little less clear what the specific email is going to tell
5 you about Comey. It will tell you, I guess -- who's on the
6 email is one thing, but the precise email, I'm not sure that
7 it tells you anything about nationality or location
8 necessarily. So, what's your thinking on that?

9 MS. BALTER: So, I think there are two issues with
10 that. The first is that it will -- it is relevant to the
11 scope of discovery, as we've been discussing earlier today.
12 We do need to know the personal email addresses. Those do
13 need to be searched for for the directors and officers, and
14 we don't have that information.

15 The joint administrators have said that the
16 production of documents would be -- it would identify people
17 who are -- have little connection to the historical
18 operations of BSGR. But the only example that they've given
19 of that is an email of that redacts the email address of
20 Asher Avedon, who was actually the president and the CEO of
21 BSGR Guinea, a key subsidiary of BSGR. So, that's clearly a
22 person with a major connection to the historical operations
23 of BSGR.

24 And then I think Your Honor asked also about
25 Comey. For example, we know that personal email addresses

1 of Dag Cramer are being used from a company called Norn
2 Vernandi. Where that's located, where he's sending that
3 from, that's information that is important and that goes
4 directly to the Comey inquiry about where a director of BSGR
5 is actually conducting his BSGR-related business through
6 this other country. So, that kind of information is
7 actually relevant to Comey.

8 MR. HYMAN: Mr. Kramer's email addresses or the
9 one that was just referenced are business email addresses
10 and those are not being redacted. We are also happy to
11 stipulate to the identities of various members of the board
12 of directors at certain points of time and where they're
13 located. What we're talking about here, though, is personal
14 email addresses of anybody that may be mentioned in any one
15 of these documents and their nationality.

16 All we are saying is that the general rule for
17 that type of information, which we really -- other than in
18 some very certain -- you know, particular circumstances
19 might be relevant, although whether somebody's Swedish or
20 not, I'm not sure that that's more relevant than where
21 they're actually operating --

22 THE COURT: No, but it might give you some
23 indication as to where they may conduct business, right? I
24 mean, so I don't think when you think about discovery, the
25 old test used to be reasonably calculated to lead discovery

1 of admissible evidence that's been thrown over the transom.
2 But the idea is it doesn't make sense. Would it be helpful
3 when weighting all the costs and burdens?

4 So, I mean, the way I think of it is if you were
5 doing this in a domestic case, you'd have the email
6 addresses on there. You might have them for attorneys' eyes
7 only because you wouldn't want to have an unwarranted
8 personal intrusion. But otherwise, everybody's in the
9 situation where you're going to have to assess the email
10 circumstances and the address email by email, person by
11 person. And that sounds like a bad thing for you, it sounds
12 like a bad thing for them because it's contextual -- in the
13 case it may be contextual. In the email -- and so I don't
14 know that you...

15 So, for example, if there's a personal email of
16 somebody who's on a CC, who never shows up other documents,
17 well, in hindsight, that will turn out to not be necessary
18 for the case. But if there are personal emails that recur
19 numerous times from folks who were involved in BSG business,
20 and there's a question for purposes of Comey as to well,
21 where are they doing things? Are they in Israel? Are they
22 in Guernsey? Are they in Switzerland? Are they somewhere
23 else? Where are they actually doing things? And there's
24 just where their personal residence is, and we have to put
25 together sort of a mosaic picture of things, then it would

1 be relevant.

2 And so, I think as a matter of discovery because
3 you can't figure this stuff out ahead of time, it seems in a
4 domestic case to be perfectly appropriate, but I would take
5 protections so that people's individual emails are not
6 floating around everywhere in the record of the case because
7 that would be, I would think, in appropriate. It would be
8 our own little American domestic version of protecting
9 somebody's privacy.

10 So, but I do think that as a general matter, when
11 you have emails and they're business emails, and then
12 somebody's personal information because they have a person
13 email but it deals with BSG business, we've generally viewed
14 it as fair game.

15 MR. HYMAN: Your Honor, in virtually every context
16 we're not talking about eliminating or redacting the
17 person's name. All we're talking about is redacting an
18 email address and references to nationality.

19 THE COURT: No, I know, but that wouldn't happen
20 in a domestic case.

21 MR. HYMAN: We don't have GDPR to contend with in
22 a domestic case.

23 THE COURT: Yeah, but I can make a finding that
24 it's relevant and appropriate because I would make that
25 finding in a civil case if somebody required me to make a

1 finding one way or the other.

2 MR. HYMAN: But is it as to somebody that has
3 nothing to do with Comey whatsoever --

4 THE COURT: But your hypothetical picks your set
5 of facts that you want. They can pick a hypothetical that
6 picks their set of facts and say we have somebody who's
7 doing a lot of BSG business. It turns out they use a
8 personal email, and it turns out their location is actually
9 relevant to Comey. I don't know. So, that's why in
10 discovery you would permit it and you would take protection.

11 So, unless there's something I'm missing, I will
12 make that finding and then I will say (indiscernible) to
13 establish United States law despite finding that it is
14 appropriate and necessary for the case to proceed as a
15 matter of discovery, that all personal emails will be
16 treated as if they're under seal so that their private
17 information is protected, and that we will have a discussion
18 when we got to the merits to talk about how to use or not
19 use any individual.

20 Because, for example, I can't imagine that every
21 single personal email in any of the documents that are going
22 to be produced is going to turn out to be relevant. It's
23 going to be a much smaller subset, if at all, and then we'll
24 talk about that in a context that's appropriate.

25 MR. HYMAN: Yeah. I think, Your Honor, our

1 position was not that we'd never produce personal email
2 addresses where they might be relevant. What we were
3 suggesting is that it should be the exception rather than
4 the rule --

5 THE COURT: I didn't hear a proposal that would
6 allow... I mean, then it becomes something where you get to
7 decide where you think it's appropriate or not, and I don't
8 know how to police that. And I don't even know, in my
9 thinking about it, how you do that ahead of time. You can
10 look at it and say, well, it seems to be kind of an
11 important person so it's in the yes pile. Well, this person
12 seems to be less important so it's in the no pile. And then
13 that might be in the initial phases of review. By the time
14 you do your later phases of the review, the person who's in
15 the yes pile turns out to be not so yes, and the person in
16 the no pile turns out to be not such a strong no. So --

17 MR. HYMAN: But that person will be identified in
18 the document. Again, we're just talking about the personal
19 email addresses.

20 THE COURT: I know but then we're talking about
21 huge amounts of money to re-review everything for reasons
22 that -- again, we wouldn't do in a domestic case because we
23 would find that to be not valuable and not an efficient use
24 of anybody's time. So, again, I'm going to make that
25 finding that for purposes of the case, and that will go in

1 the order, and then I think that addresses the GDPR issue.
2 But notwithstanding the fact that I find it necessary for
3 the case and, therefore, to address the GDPR protocol, I
4 think it is nonetheless appropriate to treat those personal
5 emails as things under seal for purposes of the case, and
6 any request to use them in open court will require
7 permission and we'll have an appropriate vetting process
8 when we get closer to the merits.

9 All right, so that's my ruling about Dispute
10 Number 2. And then I think we have Dispute Number 3.

11 MS. BALTER: The third issue just has to do with
12 what the partly redacted information under Category 2, the
13 circumstances under which they provide redaction. The joint
14 administrators have now agreed to provide an explanation
15 when a category two redaction is made, but they've objected
16 to specific language in Vale's protocol which says that such
17 redactions should only be made in limited and exceptional
18 circumstances. (indiscernible) is perfectly appropriate and
19 necessary to define the circumstances under which Category 2
20 redactions can be made. They haven't really articulated a
21 basis for their objection to that language.

22 THE COURT: So, Category 2 is the one where
23 there's already been a finding of the information that's
24 relevant to the case and so -- but there's a then -- what we
25 think of as a more extraordinary or unusual invocation, say,

1 notwithstanding it's relevant to the case. So it really
2 isn't covered by GDPR's protocol at this point because
3 there's been a finding that's necessary or a concession
4 that's necessary to the case -- that it is still nonetheless
5 appropriate to redact.

6 MS. BALTER: Right. And they're required to
7 provide an explanation under that kind of circumstance where
8 they think it's not relevant and necessary. And we want to
9 just make very clear that that's a limited and exceptional
10 circumstance, and so that's why we've included that
11 language.

12 MR. HYMAN: Your Honor, it's a subjective
13 characterization. We're agreeing. I don't know that we've
14 come across any instance where we've redacted Category 2
15 information. What we're objecting to, though -- it's not
16 describing our reasons for doing so, it's just the
17 characterization of it being extraordinary... I'm not
18 forgetting the language. Limited and exceptional.

19 THE COURT: I don't want to get hung up on an
20 adjective but at the same time I do think if it's necessary
21 for the case, I'll use what I think is legally appropriate.
22 The presumption is it's going to be produced. So I'm not
23 going to call it extraordinary and unusual but that's the
24 presumption because that means that there is no GDPR issue
25 because there is a concession and, if necessary and you want

1 to put it in the order, I'll make a finding, that this is
2 appropriate and necessary for the case.

3 So, if that's the circumstance, then the
4 presumption is it should be produced. And where the
5 presumption is something -- that means there is a burden on
6 the side who wants to rebut that presumption to come forward
7 with specific evidence and explanation as to why that's not
8 the case.

9 So, I won't require the adjective but I will have
10 described it in court as such and I think that that,
11 hopefully, should moot out that issue. So, for purposes of
12 the order, I think what you could say is that if something
13 is in Category 2, which means it's understood to be
14 necessary for the case, there's a presumption it's going to
15 be produced. And to the extent that the foreign
16 representatives, the joint administrators believe that it
17 should not be produced, they will justify their withholding
18 of the information.

19 MR. HYMAN: I think that's what the protocol
20 already says, Your Honor.

21 THE COURT: All right, so that's that. So, what
22 else do we have to -- after going through our long list --
23 and I'm very happy that my list of things mirrored your
24 list.

25 MR. ROSENTHAL: So, Your Honor, I think now we

1 just have some miscellaneous things with regard to the
2 productions, many of which are kind of red flags that came
3 up when Mr. Peters was speaking that I wanted to address
4 with the Court, and also some proposals in terms of going
5 forward that we have by some of the things that were said.

6 I think to start with, I was a little surprised,
7 Your Honor, that Mr. Peters isn't here now. He never said
8 this morning after he spoke and we deferred it to this
9 afternoon, that he wouldn't --

10 THE COURT: I don't want to -- again, every side
11 gets to present their case how they want to present their
12 case. And if I find it to be a problem that somebody's not
13 here, then it's a problem and I'm not going to stand on
14 ceremony, so I don't want to get bogged down in that.

15 MR. ROSENTHAL: That's fine, Your Honor. This is
16 my segue into saying what I did say this morning briefly
17 before we got into other issues, that there are some serious
18 inconsistencies with what the Court continues to be told
19 over time, you know, both in the letters, by Mr. Peters when
20 he stood up -- not as an officer of the Court but not under
21 oath. And maybe that's something that in the future we need
22 to rectify, and today --

23 THE COURT: Well, I will say I understand him to
24 be counsel, is that correct?

25 MR. HYMAN: I don't think he's a lawyer. No, Your

1 Honor, he is a forensic partner at BDO in the Accounting
2 Group.

3 THE COURT: I consider that to essentially be a
4 proffer by the joint administrators as to what the truth is.
5 And so if somebody stands up in court and represents
6 something and they do so -- to the extent it turns out not
7 to be accurate, they do so at their peril. So, I don't know
8 that I need to go crazy on the evidentiary aspect of it.
9 When we're talking about discovery, if we did that for
10 discovery we'd all be out on the ledge very, very quickly.

11 MR. ROSENTHAL: That's totally fine. I just
12 wanted to point out, Your Honor, that there are some things
13 and I do want to mention them now.

14 THE COURT: Right, yeah, so let's get to the meat
15 of that.

16 MR. ROSENTHAL: So, what Mr. Peters said is, he
17 said that there's a team of 15 people with (indiscernible)
18 for GDPR and then it goes to Duane Morris after that for
19 privilege. And Your Honor may recall that at our last
20 hearing, before I had a chance to raise some concern, the
21 Court sua sponte expressed concern that documents were
22 having a GDPR cut or redaction before counsel was looking at
23 them.

24 And Your Honor said on Page 14 -- you said, "Let
25 me back up for a second. So, does that mean for the

1 categories of documents that Duane Morris does not have yet,
2 that they are going to eventually obtain possession of those
3 in un-redacted form? I mean, then there's no falter between
4 what exists and what Duane Morris will eventually have
5 access to." And Mr. Hyman said, "That's absolutely correct,
6 Your Honor."

7 But now we're being told that the GDPR review is
8 coming before the Duane Morris review, so it seems exactly
9 what the Court was concerned about we were concerned about
10 last time, and that we were all assured was not happening.

11 The second and related thing --

12 THE COURT: Well, let me sort of see if I can
13 drill down on that. So, the idea is that there's counsel in
14 the case and counsel is in a position to do things like make
15 proffers and make representations to officers of the Court.
16 And my comment notwithstanding about not standing on
17 ceremony as to evidence in discovery disputes, we did talk
18 about what Duane Morris is going to see as counsel and what
19 that looked like and how it was going to work so that they
20 basically were in a position to make representations because
21 they really had knowledge of things from sort of the
22 beginning to the end. So, what can you tell me about that?

23 MR. HITCHING: Your Honor, Jarret Hitching. Just
24 to address the first point. Documents that are coming to
25 Duane Morris for purposes are -- we can see what is flagged

1 for redaction. So, the text -- the redaction text is
2 shaded, we can see the underlying information that is being
3 masked.

4 THE COURT: So, you know what's been flagged but
5 you can see what's been flagged?

6 MR. HITCHING: Correct. Correct. And, in fact,
7 we have the ability to take that designation away if we deem
8 it inappropriate.

9 MR. ROSENTHAL: So, that's obviously reassuring,
10 but then the other thing is, Your Honor -- and I saw it
11 again last time we tried to drill down and get a sense of
12 the sequencing -- it seems to me like if it's already being
13 redacted from GDPR with the shading and not the full blacked
14 out redaction and then they're looking at it for whatever
15 purposes, that -- who's doing the review? Because it's
16 inconceivable --

17 THE COURT: You don't get to tell him how to do
18 things. I want to make sure that counsel in the case has
19 enough information, they can make their appropriate
20 representations and that there's not any sort of wall that
21 means that they're sort of all buying sort of
22 representations and nobody's sort of checked them.

23 But I am not going to micromanage how they do
24 this. It's not a good place for a court to be. It's not,
25 frankly, something that... What I care about is the

1 results. And so I think as to the substantive issues we've
2 talked about, you've raised a number of issues, I've agreed
3 with, frankly, most of it, and so that's what I'm going to
4 worry about. I'm going to worry generally about that I have
5 counsel on the case who can speak authoritatively. I'm
6 satisfied with the statement that's been made. If there's a
7 specific cause or reason in the future to revisit that,
8 we'll take a look at it. But I have no desire to start
9 finding out in what sequence they're doing things. That's
10 not -- it's just not a productive conversation. We have
11 enough things to get through.

12 MR. ROSENTHAL: My apologies, Your Honor. I think
13 I was unclear in the way I spoke then. Because my
14 understanding from what was being said is that therefore
15 counsel is only being given the documents that BDO has
16 already decided are relevant to be shown to counsel. That's
17 where my concern lies, because --

18 THE COURT: My understanding is that -- is,
19 listen, people hire out folks to review documents and
20 there's also AI that goes on these days as opposed to
21 associates or contract attorneys sitting in large warehouse
22 for months on end. And so that is what it is. And, again,
23 when you are -- the way that discovery responses are
24 supposed to be done -- there's a certification and the
25 person who certifies is the person who steps up to the plate

1 as to the process. And so I assume that the discovery
2 responses here will be no different. Somebody will have to
3 certify what those responses are. If it's a BDO person or
4 it's a BSG, whoever the person is, and then there are fair
5 questions in discovery, in depositions, if you want to go
6 that route, need to go that route about the process.

7 But, again, I don't think now is the time to --
8 you can talk offline but I don't think now is the time in
9 court to have sort of an open inquiry about well, how are
10 you complying with your discovery obligations? It sort of
11 echoes some of whatever I said before, which is, you know,
12 there are things that are the backdrop there and the very
13 air we breathe and the world we live in about how -- what
14 people's obligations are. And so that is what it is, and if
15 people don't behave accordingly then things go badly.
16 Eventually. Maybe not now, but that's how it goes.

17 MR. ROSENTHAL: Well put, Your Honor. And I just
18 think that it just caught us by surprise in light of
19 representations made last time, but we'll move on.

20 THE COURT: All right.

21 MR. ROSENTHAL: The other thing that concerned us
22 with regards to what Mr. Peters said when we were first told
23 there would be 37,000 documents reviewed and then produced
24 by a week ago, and now they have 425 ready now, in a week
25 another 516. And then he said that as they're reviewing the

1 next 28,000 they'll start uploading the next batch of it,
2 was what he said.

3 And, again, it just concerns us that this is being
4 drawn out. We're going to have production going on to next
5 year. Because last time, on Page 71, we were specifically
6 told it's all uploaded and the review's underway, and just,
7 you know --

8 THE COURT: Well, I have the language of the
9 letter on August 27th saying it will then be reviewed and
10 gathered. Here's my concern. My concern was profound when
11 I read that things were going to be produced next week and
12 then things weren't produced. Because the purest -- the
13 surest way to make progress in a discovery dispute is to
14 start producing things so we can actually have substantive
15 discussions. It's like the surest way to deal with a
16 secured creditor is to start paying them. They don't want
17 to talk to you until you start paying them.

18 And so my thought is -- I'm not naive enough to
19 think this is the last discovery conference we're going to
20 have, but that I want to see production and that should also
21 go in the order which is that what was said about what was
22 going to be produced is actually in the order. Because,
23 frankly, there were things that were said last time and it
24 didn't happen, and we need to have these things in an order
25 because I don't want to -- it can't be a moving target.

1 And so my goal is to get documents produced,
2 reviewed and produced so that we can get to the end. So,
3 there has still been a very, very modest production. We're
4 talking about 211 new documents. So, and then other
5 conversations you're talking about 1.2 million, 28,000,
6 37,000, all sorts of very -- much larger numbers that,
7 frankly, are hard to even fathom given that we have 211
8 documents thus far. So, substantial production needs to
9 happen soon, it needs to happen now. Nothing seems to be
10 done on a rolling basis, which is what was represented was
11 going to happen. I have representations from BDO today that
12 they were start producing things daily. You know, the
13 representations are there so that courts don't have to be
14 make rulings, but then if the representations are made and
15 they aren't followed through on, then courts need to make
16 rulings.

17 So, rolling production is so ordered. It is
18 required and must occur. And it will occur on the schedule
19 that was represented in open court by BDO, who's working for
20 the joint administrators, and that's what the order will
21 reflect.

22 And so I understand you're understandably nervous
23 about this and I don't know how to square what's gone on in
24 this case with the notion of a Chapter 15 proceeding
25 expeditiously, but Chapter 15 cases I'm discovering are much

1 like Chapter 11 cases. They all have their own
2 personalities and we deal with what we -- what the case
3 presents.

4 And so the elephant in the room that has not yet
5 been mentioned today is what happens with the District Court
6 and the request to -- that's been made that hasn't been
7 ruled on, presumably, and the agreement to stay that through
8 August -- through October 31st? And the answer is I don't
9 know. And everybody preserves all their rights as to make
10 any arguments based on everything that's gone on. And so
11 the only thing I assume is that if the October 31st date
12 comes and goes, that you all will figure out how you want to
13 handle it so we can have some sort of -- we know what the
14 process looks like. Are people running here? Are they
15 running to District Court? How are we doing it? And to
16 work that all out. That's so -- that -- we need to talk
17 about that. Maybe now is as good a time as any, or maybe we
18 need to get together towards the end of the month.

19 MR. ROSENTHAL: Well, I mean, on that issue Vale's
20 position is clear, given all that's transpired or the lack
21 of transpiring. We don't consent and we think that there's
22 not anywhere near a basis for the Court to enter any kind of
23 injunctive relief.

24 But on the subject of the productions, we actually
25 have a proposal, Your Honor, that hopefully removes as much

1 of this as possible from the Court.

2 THE COURT: Well, before we segue from the
3 injunction issue --

4 MR. ROSENTHAL: Yeah.

5 THE COURT: -- their -- right, so everything that
6 is sent to this Court is sent to us from the District Court
7 on an order of reference. So, here you have a live District
8 Court proceeding, a live proceeding in the Bankruptcy Court,
9 which begs the question where should the issue of injunctive
10 relief be addressed if it needs to be addressed? And so we
11 need to work our way through that. So, my desire is to
12 certainly -- if the District Court -- the District Court
13 will no doubt be familiar with the dispute based on the fact
14 that it has things presented to it. It doesn't have the
15 discovery issues that we've been dealing with here, but
16 there's plenty of record of that.

17 If it's choosing to not recognize things, well,
18 then we're in one world. If it chooses to recognize the
19 judgment, it would seem, since that would -- that the
20 District Court should decide the first instance, whether it
21 wants to refer that -- any injunctive request down here or
22 certainly address it itself.

23 And so my thought is that when you -- that that
24 probably is something to tee up with the District Court when
25 you hear from the District Court as to how to address that.

1 That would be my -- that's sort of my -- been my assumption,
2 but I realize the only person I had expressed that to is
3 myself internally, not out loud, and that I should share
4 that with you. I think I've sort of hinted at that in the
5 past, just because that's kind of the way it sort of makes
6 sense in terms of -- we're a court that really gets our
7 jurisdiction from the District Court, and if the District
8 Court has a live case.

9 And I think Judge Glenn has done a similar thing.
10 He said you should go to the District Court. I think it was
11 another Chapter 15 where there -- and I don't remember the
12 name of the case, where there was a question about
13 injunctive relief pending something that the District Court
14 was doing. And he said, well, the District Court would know
15 I have the case. They are well-versed, so we don't have
16 some of the -- necessarily all of the time saving economies
17 where a District Court is sort of -- you're trying to
18 withdraw the reference and they say, listen, you've been
19 dealing with this forever. I just met you people and it
20 makes sense to stay in Bankruptcy Court. But even then, the
21 District Court gets to decide when there's a motion to
22 withdraw the reference.

23 So, my -- again, this is my default, which is
24 almost treated like a motion to withdraw the reference. You
25 mentioned that the District Court -- if the District Court

1 thinks it would be helpful for the Bankruptcy Court to do
2 it, I'm happy to do it. But at the same time the District
3 Court will have its own independent basis of knowledge, and
4 then there'll be other things you would talk about. But,
5 frankly, it may work the other way, too -- is if I dealt
6 with it, you may be telling me something about what the
7 district Court's decision and various things.

8 So, that's my default. If somebody wants to make
9 a run at it, you can let me know but --

10 MR. HYMAN: Your Honor, the status in the District
11 Court action has not changed. There has never been a
12 hearing before Judge Broderick. He has --

13 THE COURT: But I don't know that he's required to
14 have a hearing.

15 MR. HYMAN: And he may not be, but I'm not sure
16 that there's a real venue to seek injunctive relief there.
17 I suppose -- I suppose we could but --

18 THE COURT: Well, but there's no venue to seek it
19 here because there's nothing right now for you to... I
20 mean, this is all going to come up when the District Court
21 issues a decision if the decision is to recognize a judgment
22 which allows them to move forward. At that point, you'd
23 have to run somewhere. You'd have to run here or you'd have
24 to run there.

25 And so what I want to avoid is the unnecessary

1 process related fire drill where -- well, we're going to run
2 to both courts and we'll see what happens, or we're going to
3 make a guess and we don't really know what Judge Lane may
4 think or what Judge Broderick may think. And so I'm trying
5 to avoid that kind of inefficiency by telling you what my
6 default is and to say that if you get a decision from Judge
7 Broderick that would trigger a need to file such a motion,
8 that I would think that you would -- whatever his procedures
9 are -- find a way to tee that up and ask him and say, we'd
10 like to seek. Right? Because you can do that in a civil
11 case. We want to seek a stay.

12 And so it's not something the District Court is
13 unfamiliar with. And just say, we -- just to fill out the
14 picture, we've been doing these things in Bankruptcy Court,
15 and the bankruptcy judge said he'd certainly be happy to
16 help but certainly recognized that in the first instance the
17 District Court should get to decide if it wants to address
18 the injunctive piece itself.

19 And there's certainly -- there's a civil
20 injunction piece to any judgment. There's also a -- you
21 know, there's an injunctive piece to Chapter 15. There's a
22 couple ways to do this. So, but again, all my jurisdiction
23 flows from up the street. And so respectful of that fact,
24 and trying to -- I want to raise it now because I don't want
25 to impose on the parties or Judge Broderick in -- if we

1 don't talk about it and then we all find ourselves in a
2 moment of panic running around figuring out what are we
3 doing and where are we doing it? That doesn't serve
4 anybody's interests.

5 MR. HYMAN: Yeah. I think the only concern that
6 we have, Your Honor, is just given the lack of attention
7 that we've gotten from Judge Broderick, I don't know that
8 we're going to get a response. We can certainly try and --

9 THE COURT: Well, I don't know that they -- for
10 them to respond to at this point. The matter's briefed and
11 he's going to get to it, and he may be in the middle of a
12 large criminal trial, he could be doing any number of
13 things. And so I'm unaware of any pending request, and I'm
14 sure he'll deal with it completely appropriately. And so,
15 you know, you may want to write all your letters and have
16 them ready to go for whenever -- if that eventuality comes
17 up.

18 You also -- again, I won't tell you how to
19 practice, you know what you're doing. But, you know, I can
20 imagine a circumstance where if he permits letters to
21 chambers to say, Judge, we want to make you aware of -- and
22 give you a refresh on where we were. We've already told you
23 we had an original deadline of an agreement. We updated
24 that and we told you about that too. And now we're telling
25 you that we don't have an agreement as of October 31st. If

1 this happens, then the Debtor is going to seek a stay, Vale
2 will seek to oppose it. There's a question about what
3 appropriate forums that should all be heard. This is what
4 we can tell you about that. And you want to do that to be a
5 snowplow and clear the way for the eventual discussion on
6 the merits.

7 And, again, I'm happy to be -- to address things
8 as is appropriate. But, again, I'm very respectful of where
9 my jurisdiction comes from and the fact that he has a case
10 between these two parties on the merits and has the ability
11 to grant a stay or not grant a stay based on his considered
12 judgment and looking at issues. So, that's why. And so
13 I'll let you address that as you think appropriate.

14 MS. SCHWEITZER: Your Honor, I appreciate you
15 raising it ahead of time and we particularly would want to
16 avoid a TRO type situation given we all know (indiscernible)
17 looming. I think the one thing just to put out there, and I
18 completely respect your view of looking toward the District
19 Court, is that there is a lot of history here. And the
20 original stay that we sought was a TRO pending
21 (indiscernible) commission hearing, things like balance of
22 the equities and uproot merits and all of that to flow into
23 it.

24 And to go to this forum, I think the one thing
25 that I would not want to be perceived is that you were

1 neutral or had no view on those types of positions.

2 THE COURT: No, I think you can safely represent -
3 - and there's a transcript -- that if called upon to make a
4 ruling, I would make a ruling. I'd be happy to do so. And
5 certainly if the District Court thinks it would be of
6 assistance for me to do so, I'd be happy to have that matter
7 added to my calendar.

8 And so -- but at the same time, my -- I wouldn't
9 say reluctance but my raising it now is to express my sort
10 of respect for sort of the different overlapping
11 jurisdictions and, again, where the Bankruptcy Court
12 jurisdiction comes from. So, my thought is the appropriate
13 -- and I am putting something in a sense on Judge
14 Broderick's plate in the sense of then you're going to go
15 ask Judge Broderick, presumably, how he wants to handle it.
16 But I think -- that, I think, is appropriate in the sense of
17 -- given all the facts and circumstances.

18 But, no, I'm not reluctant. I'm just trying to be
19 respectful. And, again, I think it's in everyone's interest
20 to know what the process looks like because it seems pretty
21 clear based on things that have been said over the last
22 couple of hearings, that if something happens after October
23 31st, there's going to be a bit of a fire drill on this
24 particular issue and people want to know what forum, where
25 they should go and how to handle that.

1 So, I think I'll trust you all on your considered
2 professional judgment to tee that up as you think
3 appropriate, whether it's a letter or something else, or
4 your request for a status conference. And, again, that goes
5 to Judge Broderick's ways of doing business and I'm not
6 familiar with his local rules and his procedures for his
7 chambers.

8 MR. ROSENTHAL: Ultimately, Your Honor, it's the
9 joint administrators' decision on whether to file any kind
10 of motion and how they would want to proceed. You know, we
11 would just file an opposition and go from there to wherever
12 it is, because, frankly, there's been a history.

13 THE COURT: No, no, but what I'm trying to do is
14 I'm trying to give you the speech that I would give you if
15 somebody filed that motion here, and then I got you all on
16 the phone and I said, well, here's my issue. And so this is
17 my -- I have very few powers of prophecy, but this is my
18 prediction as to what exactly that speech would look like.
19 And so then you would not only -- they would have that
20 motion, but then you would all be running to the District
21 Court to say the Bankruptcy Court says, what would you like
22 to do? And so I'm trying to cut that off and essentially
23 tell you where I'm going to be, because I can predict that
24 with almost -- almost certainly at this point, just given
25 the circumstances.

1 MR. ROSENTHAL: I mean, ultimately, Your Honor, if
2 they wind up filing somewhere, that would probably put them
3 on a clock that they haven't put themselves on so far.

4 THE COURT: Well, again, we'll get to it. I'm
5 just -- you all do what you think is appropriate but I don't
6 want anyone to be surprised if a motion gets filed here and
7 nobody's talked to the District Court, you pretty much know
8 exactly what I'm going to say. And so that was my reason
9 for raising it. All right, so --

10 MR. ROSENTHAL: I have a proposal now, Your Honor.

11 THE COURT: Sure.

12 MR. ROSENTHAL: Because I do think that it is
13 probably not the most exciting part of the Court's calendar
14 to have monthly check-ins whereby things happen.

15 THE COURT: We do whatever walks in the door. But
16 listen, I recognize it's also not, frankly, what you want to
17 be spending your time on either.

18 MR. ROSENTHAL: And it also shouldn't be where we
19 get those through documents briefed out to us the week after
20 the hearing and we get maybe a (indiscernible) for the three
21 weeks subsequent, and we kind of are wondering when's the
22 rest coming?

23 So, what I would propose and I think this is
24 pretty low-hanging fruit, Your Honor, is if the joint
25 administrators at the end of every week give us a weekly

1 report on where things are in discovery. What's been done
2 so far, what's in progress, what hasn't been started, and
3 what their estimate is on the completion date of discovery.

4 So, that way we are not kept in the dark. We
5 don't have to wait and write a letter to the Court and say
6 we've heard nothing over the past month. So, that's kind of
7 low-hanging fruit number one that I would suggest, just to
8 keep the trains moving and communications open.

9 THE COURT: All right. Any thoughts?

10 MR. ROSENTHAL: I can read those again if you want
11 that list of four.

12 MR. HYMAN: Your Honor, I think that you were
13 clear in what you were ordering when you were ordering
14 rolling production.

15 THE COURT: I know but things haven't happened
16 that way.

17 MR. HYMAN: And I understand that.

18 THE COURT: So --

19 MR. HYMAN: And we will now have an order --

20 THE COURT: Well, I know, but I thought we had an
21 order before. So, it was from the bench but it was still an
22 order and it didn't seem to get the trick done.

23 In a former life, I was involved in a Freedom of
24 Information Act case that was enormous. And while the judge
25 was incredibly patient in the case, he also didn't want to

1 have dealings every day with the parties. And so status
2 reports were a useful thing to do, so that hearings didn't
3 trigger the exchange of information that should've otherwise
4 been occurring.

5 So, I'm inclined to think that a short letter that
6 refreshes what we've been talking about -- we essentially
7 have three categories that are in the August 27th letter.
8 You sort of gave a refresh today as to that. And Category
9 1, presumably, is done and then we're on to Categories 2 and
10 3. I've seen different -- I've heard different numbers, but
11 I would think that that makes sense and is not a big...
12 Frankly, it'll save as much attorney time as it'll cost in
13 terms of requests for updates.

14 I mean, I've gotten plenty of letters in this
15 case. And so my thought is that this is a letter that
16 actually may save the need to write future letters. So, I'm
17 inclined to do that. But I realize this is the first of
18 several proposals. So, maybe -- hear them all so we can
19 figure out where we are.

20 MR. ROSENTHAL: So, Proposal Number 1 was the
21 weekly status reports that, hopefully, just opens a line of
22 communications. The second thing was, because I don't want
23 to have a dispute down the road that leads to, you know,
24 requiring court intervention and be assured of well, we're
25 far along on this process -- is there should be an exchange

1 with us, as happens in a lot of cases, of what are the
2 search terms that they're using, given that Mr. Peters
3 mentioned that they're using search terms and they're trying
4 to figure out how to tweak the search terms to get the right
5 number of documents to review.

6 I just think within a week, let's get a list of
7 those search terms so that we can have a dialogue if there
8 are any concerns or things that we'd like to propose before
9 we wind up in a dispute in two months when we first find out
10 them. So, I think that, again, is just relatively low-
11 hanging fruit that's not uncommonly done.

12 THE COURT: So, that's two. What's three?

13 MR. ROSENTHAL: And then the third thing is, and I
14 recognize this won't be a weekly thing given that now
15 they're going to have go back and gather the documents from
16 the other custodians that they had not started to gather
17 from. But I think let's say three weeks from today, I think
18 that weekly update should have a status support on where
19 they are with gathering the documents from these other
20 custodians so we don't, in two months, have to go to the
21 Court and find out that they're nowhere yet, especially if
22 we might be hit with a TRL in a month. So, again, just
23 trying to anticipate things.

24 I think these are all pretty low-grade, low-impact
25 requests that just, hopefully, avoids disputes that have to

1 come to the Court while waiting for a Court dispute to find
2 out information.

3 THE COURT: All right. And did you have three or
4 four? I thought I heard four. I'm not soliciting a fourth
5 if you don't have a fourth currently.

6 MR. ROSENTHAL: Well, those are the only three.
7 The only fourth suggestion that I have is in the event that,
8 you know, next time we're met with new factual claims that
9 somehow affect what the discovery obligations should be.
10 They put in affidavits this time from Mr. Callewart. And I
11 think next time --

12 THE COURT: I'm not going to micromanage future
13 disputes. So, it's hard enough to manage present disputes.
14 So, we'll see how it goes.

15 But as to the first three, those sound reasonable.
16 After all, people in discovery, if you have -- after you get
17 your document discoveries, you wait to take your deposition
18 and introduce your civil case, and then you depose the
19 person who signed the discovery responses and you say, when
20 you looked, how did you look? Where did you look? What
21 search terms did you look? So, that seems to be fair game
22 for purposes of civil discovery.

23 And the other one seems to me just -- we're going
24 to end up having that conversation at some point. And as
25 part of the ongoing meet and confer obligation under the

1 Federal Rules of Civil Procedure that really come into play
2 for any contested matter, which this pretty clear is -- that
3 seems to be consistent with that. But let me hear anything
4 from the --

5 MR. HYMAN: I don't think we have any objection,
6 Your Honor. You know, we will provide weekly updates. I
7 don't know whether a less formal email is acceptable rather
8 than a formal letter but --

9 THE COURT: Yeah, I think it's exchange of
10 information.

11 MR. HYMAN: We're happy to provide an update. We
12 will -- in those weekly updates, we'll provide updates on
13 what the joint administrators have done to request and seek
14 and produce documents from all the other parties that we
15 spoke to today. As it relates to search terms, we've got to
16 speak to the client but I don't anticipate a problem. I
17 don't know that we can get that done by tomorrow. Mr.
18 Rosenthal mentioned the end of the week...

19 THE COURT: It's designed to prevent a possible
20 redo down the road, which is a disaster for everyone.

21 MR. HYMAN: That's not something we've ever tried
22 -- we're not trying to hide that from anybody. That isn't
23 an issue.

24 One clarification, though, I might ask Your Honor.
25 You made the ruling earlier related to personal email

1 addresses and nationality. There have been a lot of
2 discovery that had been undertaken and redactions that had
3 been undertaken as -- through today, which were on reliance
4 of the last set of documents that they had agreed to do.

5 THE COURT: Yeah, but you decided to produce it
6 while they had their argument pending, and that's what
7 people did to move past it. I'll let you try to work the
8 practicalities of that out and you'll come to me if you
9 can't figure it out. But that's a practical problem that
10 involves, you know, numbers, how many documents, how many
11 redactions, can you give them what they need in a narrative
12 description as opposed to going back and re-redacting?
13 There's lots of ways to skin that cat, so I'm going to let
14 you have that conversation in the first instance.

15 I'm not going to -- I'm not going to sit here
16 today and say you need to go back and re-redact. That's the
17 traditional method of doing it. But I'm going to require
18 you to meet and confer and propose suggestions on how for
19 anything you've produced that implicates that ruling, how
20 you're going to sort of true up the knowledge involved so
21 that they have what I think is -- what's appropriate and
22 consistent with the ruling.

23 So, re-redaction is one way to do that. It may or
24 may not be the exclusive way to do that, depending on how
25 things work and what the documents are. So, I'll ask you to

1 meet and confer on that, and everybody reserves their rights
2 if, in fact, the true up process is not something that
3 people can agree upon.

4 MR. ROSENTHAL: Your Honor, two more hopefully
5 very quick issues. One is, in this first batch of 211
6 documents that we got, there are a number of redactions not
7 for GDPR but just simply redacted commercially sensitive and
8 confidential information.

9 THE COURT: It's subject to the usual -- I mean,
10 you know -- I don't know what to tell you. I don't have any
11 briefing on it. You should meet and confer and, again, I
12 don't -- I don't know what to tell you. There obviously
13 needs to be a basis for it. If it's the business dealings
14 of BSG, I don't know how it's not relevant, even if it needs
15 to be subject to a protective order because it's
16 confidential.

17 MR. ROSENTHAL: So, Your Honor, we resolved this I
18 thought months ago when they were able to designate
19 sensitive documents as AEO. And if there's not a privilege
20 and there's not a GDPR issue, I don't know why anything is
21 being -- it's just the confidentiality order doesn't
22 contemplate it at all.

23 MR. HYMAN: Your Honor, we're happy to meet and
24 confer with Cleary with respect to anything that's been
25 redacted for those types of purposes.

1 THE COURT: I know, but this is -- the idea is
2 that -- what are the rules of the road, right? So, if the
3 rules of the road are flawed, then you're going to have to
4 meet and confer about everything and then we're going to
5 have 8 million more of these hearings. That's actually not
6 the way the rules of the road are supposed to work.

7 So, if the rules of the road is that there's no
8 appropriate basis to redact it, then there's no appropriate
9 basis to redact it. So, that sounds like it's subject to
10 potentially the bankruptcy rule that allows for sealing of
11 confidential business information. But you file motions to
12 address that and then we have discussions.

13 I'm not aware of any privilege, and I think we've
14 already talked about an attorneys' eyes only procedure. So,
15 I don't know why that wouldn't be used for that. That just
16 seems to be a stubborn refusal to conform conduct to what
17 we've already been talking about.

18 MR. HYMAN: We will go back and we'll take a look
19 at those documents and we'll meet and confer.

20 THE COURT: All right. Well, you're going to go
21 back and you're going to produce them attorneys' eyes only
22 with that information un-redacted.

23 MR. ROSENTHAL: So, the last issue, Your Honor, is
24 just to give the Court a heads up on something that I fully
25 expect that we will have a productive conversation with

1 counsel for from the joint administrators. But I think last
2 week, we got served with document requests and contention
3 interrogatories asking for our evidentiary basis essentially
4 for what we intend to present to the Court probably many
5 months from now in our ultimate opposition, and for
6 contention of interrogatories that are incredibly premature
7 and ultimately will be revealed in our objection that we
8 file. I've got to talk to him about timing but --

9 THE COURT: I'm not -- A, you're going to meet and
10 confer. I don't have any -- listen, I prepare for hearings
11 just the way everybody else prepares for hearings. I have
12 numerous pages of notes and notes on notes. I'm not going
13 to go on the fly. So, we're going to have to deal with it.
14 You should talk to each other. But this is what happens
15 with discovery, is -- is if there are real problems in
16 discovery, and there have been real problems with discovery
17 here, people are -- there's not the level of cooperation and
18 ability to work effectively past these issues.

19 So, again, I'm not telling you what you have to
20 do. I'm saying you need to meet and confer. But --

21 MR. ROSENTHAL: Absolutely. We plan to. I just
22 wanted to give the Court a heads up in case we have to file
23 a Protective Order Motion next week.

24 THE COURT: I know. It's just that since we've
25 gone through a lot of things, there's only so much we can

1 really do without a more developed record.

2 MR. ROSENTHAL: I'm not expecting any guidance or
3 any decisions. I'm just -- I don't want the Court to be
4 surprised if we file a Protective Order Motion. But,
5 hopefully, they recognize that contention interrogatories
6 are premature and we agree to a date in the future.

7 THE COURT: I thought there's some authority about
8 when in the process that should happen, but I don't have
9 sort of the sort of Black's Law Dictionary kind of rule
10 handy rattling around in my brain. But I mean, the practice
11 is generally to have those things come later after
12 discovery. But, again, you all will fill me in as I need to
13 be.

14 So, I want to make sure I understand what's coming
15 out of today's proceedings. So, there's going to be an
16 order that's going to be a discovery order, and it's going
17 to go through the rulings that were made on each of the -- I
18 think it was four but perhaps it was five issues that were
19 addressed starting with Mister... Starting with production
20 of documents going to Mr. Steinmetz, going to other former
21 and current directors and officers, as well as other
22 companies that were identified, going to the GDP protocol,
23 and also going to the issue -- I guess it's with Mr.
24 Steinmetz, but maybe it's with others, about control --
25 possession, custody, and control and how that's interpreted.

1 So, those are my rulings. So, I will get that
2 order, proposed order that should be served on the other
3 side. If there's any comments, they need to be provided
4 promptly. Obviously, you should share it, try to reach an
5 agreement. I'm not hopeful that there will be an agreement
6 but it's my ruling so I will -- I'm happy to take comments,
7 but as it's ultimately my ruling, I will just -- I have the
8 pen. So, that's -- so, while you may make comments, you may
9 not necessarily hear from me as to have any further
10 discussion because a ruling is a ruling.

11 As to that order and rationale, I don't think the
12 rationale needs to really be in there. I think you can say
13 for the reasons set forth in detail on the record of today.
14 That way it prevents you from having to characterize things.
15 But in terms of the practicalities, that's really what the
16 order should be addressed. The Court rules this and this is
17 what is required to be done.

18 MR. ROSENTHAL: Your Honor, in terms of timing,
19 we'd like to wait for the transcript to (indiscernible) that
20 way we can be sure that it conforms.

21 THE COURT: Yeah, that's fine. That's fine. I'm
22 going to so order it from the bench so that we have a go-by
23 going forward. But that's fine.

24 The thing that's sort of a bit of a hanging chad
25 is the issue about attorneys' eyes only. Right? And so the

1 order is going to address that in some context, which is
2 things that need to be produced, but notwithstanding the
3 fact that they're necessary for the case, there are privacy
4 protections which we will accord to individuals and we will
5 treat them as attorneys' eyes only. And I think that came
6 up in the context of personal emails.

7 You may want to fold in the confidential business
8 information as well into that, that an issue was also
9 raised, I made a ruling. It sort of didn't come up in the
10 context of what was briefed but it came up. So, maybe that
11 also goes into the order as to confidential business
12 information that it's shared attorneys' eyes only and/or
13 under seal. I'll let you work out the details of that. And
14 that it can't be used publically without further order of
15 the Court.

16 And I'm trying to figure out if there's anything
17 else where the attorneys' eyes only protocol could be of use
18 or that should be contained in the order.

19 MS. SCHWEITZER: There are only ministerial things
20 that we'll obviously attach to the GDPR protocol itself so
21 that you can so order and approve the protocol as part of
22 that.

23 THE COURT: All right. Yeah, anything obviously
24 that you agree to I'm 1,000 percent behind. So, that's
25 fine. And so just to make it very clear on the record, it's

1 represented to me that there is a GDPR protocol. There are
2 a couple of issues that were in dispute that were raised
3 today that I made rulings on but that you've done the lion's
4 share of the work on that. You have an agreement that
5 you're going to submit as a joint protocol and that you're
6 asking for me to approve and that I will approve. And so
7 you can put that in the order as well.

8 I'm trying to make this order one stop shopping.
9 And so if there's anything else that you, after consultation
10 back and forth, think, jeez, this would be good to put in
11 the order so that everybody understands the rules of the
12 road, if you agree upon it, I will -- I'd be stunned and
13 amazed if I didn't also think it was appropriate and useful
14 to put in the order. Because, again, this is -- the idea is
15 that this is supposed to go -- work forward for the parties
16 on things.

17 So, I think the only thing left then that we
18 talked about but didn't do it in specific detail is to
19 schedule for production. I'm really using what was put on
20 the record by the gentleman from BDO, from across the
21 Atlantic, who works for the joint administrators as to
22 what's going to happen. I'm adopting his schedule for
23 production, and that's without prejudice to anybody's rights
24 to come in and say the production's not happening fast
25 enough or to seek relief because certainly there's a concern

1 about the volume of documents.

2 So, maybe what may be the way this works, and I'm
3 thinking out loud here so I'm hoping not to muddle the
4 record, but maybe what this works is what the order should
5 talk about is the near term. There was a discussion about
6 the second tranche and the third tranche, that the order
7 addresses those tranches. And that for other things that
8 there's been a proposal made as to how the schedule worked
9 forward, everybody reserves their rights and that we will --
10 the parties will continue to meet and confer about things
11 beyond those immediate tranches that were represented on the
12 record. Maybe that's the way to do it.

13 MS. SCHWEITZER: We'll go back and look at the
14 record. I thought he had actually given expectations to the
15 outside date for total completion so that if we were in
16 agreement with that outside date, then we can --

17 THE COURT: Yeah, so take a look at it, at what
18 exactly he said, but that really is the go-by. Essentially,
19 if you all can live with it, I'm happy to adopt it as, you
20 know, basically the way I thought we sort of adopted the
21 earlier discussion about timeframe. So, that's -- but I'll
22 let you look at the transcript of what he said, but that
23 really is the point of the realm in terms of what we're
24 going to do in terms of scheduling. So --

25 MS. SCHWEITZER: And a procedural question. How

1 would you like us -- whether we agree or disagree, would you
2 like us to file forms of order and letters on the docket or
3 to email to you, or what procedure what you --

4 THE COURT: I don't think it needs to be sort of
5 notice to all. I mean, I'm happy if you wanted to do that.
6 I don't know that it's necessary. Because while this would
7 be relevant for other folks, it's really a discovery dispute
8 between two parties so I think it's appropriate to just, if
9 you want to submit the letter -- you want to submit the
10 order, send it to email and say, here's what we've come up
11 with.

12 And then if there is going to be an objection, I
13 would say that needs to be done within 48 hours, if you can
14 live with that timeframe, just because I'd like to get this
15 order entered before fall turns to winter. So -- and,
16 again, I know I'm so ordering it but I know that doesn't
17 give the level of clarity that is useful for attorneys and
18 for the Court, frankly, too. So, I would say that that's
19 where we'd end up.

20 So, I think you can submit just essentially a
21 letter with the proposed order, which you'll also attach to
22 the GDR protocol, and that should do it.

23 MS. SCHWEITZER: That's fine. All right, do I
24 dare ask about another hearing date?

25 MR. ROSENTHAL: Yeah, that's what I was going to

1 ask -- when you'd like to see us again. Or not like to see
2 us.

3 THE COURT: I don't know that I would phrase it
4 exactly like that, with all due respect.

5 MS. SCHWEITZER: When shall we return?

6 THE COURT: So, give me one minute here. So, what
7 are we thinking in terms of an appropriate date? How far
8 out?

9 MR. HYMAN: A month from now?

10 THE COURT: That's what I was thinking. Does that
11 work for everybody?

12 MS. SCHWEITZER: Yes.

13 THE COURT: All right, so here's what I asked you
14 to do. I, unfortunately, don't have my calendar and program
15 open. So, rather than wait as the Windows icon spins, why
16 don't I ask you to go to talk to Ms. Ebanks and get a date
17 about 30 days out, and since you're both here -- you're all
18 here, that way you can get a day that works for all your
19 schedules.

20 MS. SCHWEITZER: Great.

21 THE COURT: And if -- because it's always good to
22 be optimistic in life -- if everything is going so
23 swimmingly that we don't need to talk in a month, you'll
24 call and say we don't need to talk in a month and you'll
25 pick another date, if everybody agrees that that's the way

1 to go. And so you'll let me know. And if for some reason
2 there is something that is of a more fire drill nature like,
3 hypothetically, something issued by the District Court, and
4 there's sort of a need to have a conversation quickly -- I'm
5 trying to avoid that by my comments earlier today -- you'd
6 just get everybody on the phone and work out with Ms. Ebanks
7 a date and time for us to talk.

8 As you know from prior -- or you may know from
9 prior things, I usually deal with those kinds of things
10 within 24 hours and 36 if we're in the middle of something
11 crazy here in terms of getting you a time to chat.

12 MS. SCHWEITZER: Thank you, Your Honor.

13 THE COURT: All right.

14 MS. SCHWEITZER: And thank you for your time
15 today.

16 MR. HYMAN: Your Honor, we would just like an
17 opportunity to talk to our clients before trying to schedule
18 the date for a month out. So, if --

19 THE COURT: Yeah, that's fine. If you want to do
20 that, that's fine. Why don't you do that? What you might
21 do, though, I would suggest is maybe get a couple of
22 possible dates from Ms. Ebanks, and then that way you can
23 circulate them to folks and then you can pick among them and
24 figure out which one works.

25 MR. HYMAN: That sounds good. Thank you, Your

1 Honor.

2 THE COURT: All right.

3 MS. SCHWEITZER: Thank you, Your Honor.

4 THE COURT: All right, thank you very much.

5 (Whereupon these proceedings were concluded at 3:47 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya
Landanski
Hyde

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Date: October 8, 2019